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COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

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COMMONWEALTH OF MASSACHUSETTS
vs. Indictment No.
KAREN READ 2282CR00117
* * * * *

Day 11 - Trial with Jury
Before the Honorable Beverly Cannone

APPEARANCES:

For The Commonwealth:
BY: Adam Lally
Laura McLaughlin
Assistants District Attorney

For Karen Read:
BY: Alan Jackson
David Yannetti
Elizabeth Little
Attorneys at Law

Norfolk Superior Courthouse
Dedham, Massachusetts
Monday, May 6, 2024

Paula M. Mills
Retired Certified Court Reporter
and Court Transcriptionist

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P R O C E E D I N G SMay 6, 2024

(Court in session at 9:08 a.m.)

(Defendant present. Jury not present.)

THE CLERK: 82-117, the Commonwealth versus
Karen Read. Counsel, identify?

MR. LALLY: Adam Lally, for the Commonwealth.
Good morning, Your Honor.

THE COURT: Good morning, Mr. Lally.

MS. MC LAUGHLIN: Good morning, Your Honor.
Laura McLaughlin, for the Commonwealth.

THE COURT: Good morning, Ms. McLaughlin.

MR. JACKSON: Good morning, Your Honor.
Alan Jackson, for Ms. Read.

THE COURT: Good morning, Mr. Jackson.

MS. LITTLE: Good morning, Your Honor.
Elizabeth Little, also for Ms. Read.

THE COURT: Good morning, Ms. Read.

MR. YANNETTI: And good morning, David
Yannetti, for Karen Read.

THE COURT: Good morning, Mr. Yannetti. Good
morning, Ms. Read.

All right. Counsel wanted to see me?

MR. YANNETTI: I did, Your Honor. Judge, as I
indicated in emails that I sent to you and the

1 clerk last night and copies of the Commonwealth --

2 THE COURT: I have not seen the email.

3 MR. YANNETTI: Okay. Well, I'll explain what
4 was in it. Essentially, I was alerting the Court
5 that I would like to be heard prior to the start of
6 testimony today because since Katie McLaughlin
7 testified on Thursday and Friday, we received a
8 deluge of photographs that put her with Caitlin
9 Albert on many different occasions after they
10 graduated high school. We received information
11 from their high school yearbook that they were more
12 than just acquaintances in high school. They were
13 teammates on the track team.

14 And, even after I sent that email with the
15 photographs that I attached to it, late last night
16 we received another photo where Katie McLaughlin
17 and Caitlin Albert are standing next to each other
18 in a photo at a baby shower in June of 2021, about
19 eight months before John O'Keefe's death.

20 It's very clear to us that Katie McLaughlin
21 perjured herself, and I wanted to discuss the issue
22 of admissibility of not only the photographs that
23 we're now providing that we just received over the
24 weekend, but I also want to resurrect the
25 admissibility of "H," "I," "J" and "K" for

1 identification. And I think a discussion of this,
2 Your Honor, needs to start with what court orders
3 are currently in place.

4 The leading case with regard to the provision
5 of reciprocal discovery when the defense is --

6 THE COURT: So you want to get back to Rule
7 14, the Rule 14 issue?

8 MR. YANNETTI: It is a Rule 14 issue that is
9 supplemented by --

10 THE COURT: Okay. Hold on one second. So on
11 top of that -- we can discuss this later. I'd like
12 to get the trial started.

13 MR. YANNETTI: That's fine, Your Honor. My
14 belief, my strong belief, is that we need to
15 determine this today. And the reason is that
16 Caitlin Albert is coming up as a witness for the
17 Commonwealth. She faces the same areas of cross-
18 examination that Katie McLaughlin faced, and these
19 photos are relevant to her cross-examination.

20 THE COURT: Okay. All right. So aside from
21 the Rule 14 issue, I also think this is cumulative.
22 I don't have the email. I do have the photos. But
23 we can address this. When do you expect the Albert
24 -- I'm sorry. What is her name?

25 MR. YANNETTI: Caitlin Albert.

1 MR. LALLY: I'd say mid-week, probably. It
2 depends on how far we get today.

3 THE COURT: So we will address this either
4 today or tomorrow. For scheduling purposes,
5 Sergeant Lank, is he testifying today?

6 MR. LALLY: Yes, Your Honor.

7 THE COURT: All right. So we need a voir dire
8 of him. I expect that might take a while. Is he
9 testifying this morning or can we use the lunch
10 break for that? I need to know. If it's around
11 11:00 o'clock, we'll have a voir dire. I'll just
12 order coffee. I just need to know about that.

13 MR. LALLY: So I anticipate two witnesses
14 prior to him. So again, I can't predict
15 necessarily how long.

16 THE COURT: How long will you be with those
17 two witnesses?

18 MR. LALLY: With those two witnesses?
19 Probably a half hour, maybe a little more, with
20 each.

21 THE COURT: Any idea how long cross will be
22 with those witnesses?

23 MR. JACKSON: I will handle one of those
24 witnesses. Mr. Yannetti will handle the other.
25 And I would say at least a half an hour on cross-

1 examination. Maybe a little bit more.

2 THE COURT: Okay. Would it be up to an hour
3 on each? Again, just for scheduling. I'm not
4 holding you to it at all. I'm just curious.

5 MR. JACKSON: Thank you. I don't think we'd
6 exceed an hour. I would say safely -- I know it's
7 a big range -- but between a half an hour and an
8 hour, I think, for each of them.

9 MR. YANNETTI: I think that's probably
10 accurate.

11 THE COURT: All right. Thank you. All set to
12 bring the jurors in?

13 MR. LALLY: Yes, Your Honor.

14 MR. YANNETTI: Yes, Your Honor.

15 (Whereupon, the jury is escorted into the courtroom
16 and seated in the jury box at 9:16 a.m.)

17 THE COURT: Good morning, again, counsel.
18 Good morning, again, Ms. Read. Good morning,
19 jurors.

20 I have to ask you those same three questions.
21 And we appreciate your patience. We had to work
22 out a few things this morning.

23 So was everyone able to follow the
24 instructions and refrain from discussing this case
25 with anyone?

1 Everyone said yes or nodded affirmatively.

2 Were you also able to follow the instructions
3 and refrain from doing any independent research or
4 investigation into this case?

5 I am going to ask you if you were able to
6 refrain from seeing or reading or hearing anything
7 about this case since we left the other day.

8 With that, I am going to see counsel at
9 sidebar.

10 (Whereupon, there was a sidebar conference as
11 follows:)

12 THE COURT: Okay. So that the record is
13 clear, 16 jurors answered that last question
14 affirmatively.

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16 Court Order: Jurors or Juror Issues
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Court Order: Jurors or Juror Issues

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Court Order: Jurors or Juror Issues

THE COURT: All right. Mr. Lally, who is your witness?

MR. LALLY: The Commonwealth calls Lieutenant Paul Gallagher to the stand.

Whereupon,

PAUL GALLAGHER

having been first duly sworn, was examined and testified under oath as follows:

THE COURT: Mr. Lally, whenever you're ready.

MR. LALLY: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. LALLY:

Q Good morning, sir.

A Good morning.

Q Could you please state your name and spell your last name for the jury?

A Yes. My name is Paul Gallagher, last name G-A-L-L-A-G-H-E-R.

1 Q And how are you employed, sir?

2 A I'm a lieutenant with the Canton Police
3 Department.

4 Q And how long in total have you been a member
5 of the Canton Police Department?

6 A A total of 32 years, two years as a permanent
7 intermittent officer, 30 years full-time.

8 Q And you indicated that you are a lieutenant;
9 is that correct?

10 A That is correct.

11 Q And how long have you held the rank of
12 lieutenant?

13 A I was promoted to lieutenant August 1st of
14 2021.

15 Q And what did you do with Canton Police prior
16 to becoming a lieutenant?

17 A I was the detective sergeant from 2018 until I
18 was promoted in 2021.

19 Q And, just starting with that, what is it that
20 a detective sergeant does?

21 A So when a patrolman takes an initial report,
22 anything that needs followup, the detective sergeant
23 makes sure it's assigned to a detective, usually the
24 next detective working, and makes sure that all the
25 steps are taken to manage the cases to bring it to

1 fruition if possible.

2 Q And what is it -- sort of what are your
3 general duties and responsibilities as a lieutenant
4 with the Canton Police?

5 A Currently, they are I am in charge of internal
6 affairs, background checks, patrol, and I oversee
7 detectives.

8 Q When you say "currently," what was it prior?

9 A I was promoted in 2021. At that time,
10 Lieutenant Kelleher was the lieutenant in charge of
11 detectives. We have since had a change of police and
12 our assignments have changed.

13 Q Now, were you working with the Canton Police
14 on the morning of January 29th, 2022?

15 A I was.

16 Q And, at some point, did you receive a phone
17 call?

18 A I did.

19 Q And about what time was that and who called
20 you?

21 A That was shortly after 6:00 a.m. It was
22 Sergeant Sean Goode.

23 Q And he's a member of your department, as well?

24 A He is. He is the twelve-to-eight supervisor,
25 which our shifts actually run 11:45 p.m. to 7:45 a.m.

1 But we call it the twelve-to-eight shift.

2 Q And what, if anything, was indicated to you in
3 this call from Sergeant Goode?

4 A Sergeant Goode told me that he was responding
5 to a scene where a party was found unconscious,
6 possibly not breathing, in the snow. He stated his
7 name was John O'Keefe. He was a Boston police officer
8 who resided on Meadows Ave.

9 He further told me that he had gotten a call
10 earlier about John O'Keefe not returning home that
11 night. His friends had called the hospitals. Then
12 they called the police. Then they went out and looked
13 for him and they found him unconscious and not
14 breathing in the snow.

15 Q And, based on that information, what, if
16 anything, did you do?

17 A I told them I would respond.

18 Q Where were you initially responding to?

19 A I was initially responding to Meadows Ave. I
20 misinterpreted when he said he was a Boston police
21 officer on Meadows Ave. I thought they discovered him
22 on Meadows Ave.

23 Q And, subsequently, did you learn a different
24 location and respond to that location?

25 A I did.

1 Q And what was that location that you
2 subsequently determined was where you were going?

3 A When I called the dispatch to find out the
4 exact address, I was told it was 32 Fairview Road.

5 Q And that was from the dispatch; is that
6 correct?

7 A That's correct. It was Officer Dever who
8 answered the phone.

9 Q That would be Officer Kelly Dever; is that
10 correct?

11 A That is correct.

12 Q Now, did you go straight from home to the
13 scene or did you go stop somewhere else prior to?

14 A I stopped at Canton Police Department prior to
15 that.

16 Q And what was the purpose of stopping at Canton
17 Police Department prior to going to Fairview?

18 A I was picking up some winter gear, and I
19 advised Sergeant Goode via the radio that all midnight
20 personnel was to be held until further notice.

21 Q Now, you say "winter gear." As far as you are
22 responding to a scene, what, if any, other sort of
23 equipment did you procure when you went to Canton
24 Police?

25 A It was clothing. I needed a winter jacket.

1 Things of that nature. I was responding in my personal
2 vehicle.

3 Q Okay. And, if you know, about what time was
4 it that you arrived on Fairview Road that morning?

5 A I arrived shortly after 7:00 a.m.

6 Q And, when you arrived, what, if anything, was
7 it that you observed upon your arrival?

8 A There were some vehicles pulling away but
9 parked where the scene was were three Canton Police
10 vehicles and one black Toyota pick-up truck that is
11 assigned to our detectives.

12 Q And who, if anyone else, from your department
13 was there at that time?

14 A When I arrived, the three marked units were
15 occupied by Officer Mullaney, Officer Saraf, Sergeant
16 Goode. And the Toyota pickup was driven there by
17 Detective Sergeant Lank.

18 Q And, as far as by the time you arrive,
19 Mr. O'Keefe is no longer on scene; is that correct?

20 A That is correct.

21 Q And what, if any, vehicles or apparatus or any
22 personnel from the fire department were on scene by the
23 time that you arrived?

24 A None.

25 Q Now, when you first arrive, who, if anyone,

1 did you first sort of speak with on scene?

2 A I first encountered Sergeant Goode.

3 Q And you had a conversation with him; is that
4 correct?

5 A That is correct.

6 Q And who, if anyone else, did you talk to then?

7 A Detective Sergeant Lank joined us, as well.

8 Q And, following these initial conversations
9 with Sergeant Goode and Detective Sergeant Lank, what
10 did you do at that point?

11 A Once they updated me on the case, we decided
12 that we had to process where Mr. O'Keefe was found. It
13 was snowing heavily. Sometimes the wind was blowing
14 north. Sometimes it was south. It was changing
15 directions, and we discussed how to process where
16 Mr. O'Keefe was found because at the time we had no
17 idea how he came to be where he was.

18 Q And, with respect to that, first, as far as
19 where Mr. O'Keefe was, who, if anyone, directed you to
20 where Mr. O'Keefe had been prior to your arrival?

21 A When I arrived and I spoke with Sergeant Goode
22 and Detective Sergeant Lank, they updated me on the
23 case. They had told me that Mr. O'Keefe was
24 transported to the hospital, that they were doing CPR
25 on him at that time. They told me that he was bleeding

1 from the mouth and nose and that he may have had
2 swelling above one of his eyes. They told me that they
3 transported his girlfriend, as well, and they told me
4 the circumstances surrounding that incident.

5 They told me that at some point after the
6 phone call at the police station, friends -- the
7 woman's name was Kerry Roberts -- picked up Ms. McCabe
8 and John O'Keefe's girlfriend, Karen Read. And they
9 drove around and they discovered Mr. O'Keefe on the
10 left side of the property, I would call it the east
11 side of the property, unconscious and not breathing in
12 the snow.

13 Q Now, this area that Sergeant Goode directed
14 you to where he indicated Mr. O'Keefe was, you
15 mentioned that it was snowing heavily at this time; is
16 that correct?

17 A It is correct, yes.

18 Q And about how much snow was on the ground in
19 this area at the time that you initially went over
20 there?

21 A I would say at least four inches of snow.

22 Q Now, with reference to, as far as you
23 mentioned, sort of processing the scene, what, if
24 anything, did you and the other officers do with regard
25 to that scene as far as that was concerned?

1 A So it was a unique scene because of the
2 weather. Sergeant Lank had notified Norfolk County
3 CPAC. He had advised them that --

4 MR. JACKSON: Objection.

5 THE COURT: Sustained.

6 THE WITNESS: I'm sorry. Can you rephrase the
7 question, please?

8 BY MR. LALLY:

9 Q Sure. So Detective Sergeant Lank had reached
10 out to Norfolk County CPAC, correct?

11 A That's correct.

12 Q And what is CPAC?

13 A It's the state police investigative unit of
14 the district attorney's office crime prevention and
15 control.

16 Q And what, if any -- as far as that
17 notification is concerned, what is sort of the protocol
18 when you have an unattended death?

19 A So when we have an unattended death, the
20 Norfolk County CPAC Unit responds and takes
21 jurisdiction. In this particular case, Mr. O'Keefe was
22 still alive. So they declined to respond at that time.

23 Q And it may be a term that is pretty well
24 understood; but, when you say "unattended death," what
25 do you mean by that?

1 A An unexplained death. A person who is alone
2 at the time of their death.

3 Q And so at this point, no one from the state
4 police had responded or was responding to the scene at
5 that point?

6 A That is correct.

7 Q And so what, if anything, did you and the
8 other officers do with regard to the scene where
9 Mr. O'Keefe had been located in the snow?

10 A So we decided how we were going to process the
11 area. Our concern was there was some light pink spots
12 in the snow, and we thought it may be blood. So we
13 were discussing how to get to that to uncover the blood
14 safely. We decided we were going to process the scene
15 with a leaf blower. I figured we could direct the snow
16 off the area in a controlled fashion.

17 At that time, Sergeant Goode volunteered to go
18 get a snow blower. But what I told him in the
19 meantime, I wanted to photograph the area. I wanted
20 all the cruisers away from the house. There was one
21 cruiser, I believe, occupied by Officer Saraf directly
22 in front of where Mr. O'Keefe was. I wanted him backed
23 up. And there was crime scene tape set up, and it was
24 blowing wildly in the wind. It was serving no purpose
25 at that time. There were no civilians or witnesses

1 about, and I knew we had two officers who could protect
2 the scene while we processed.

3 So Sergeant Goode, before he left to get the
4 leaf blower, he directed the officers to move their
5 cruisers. I told Sergeant Lank the most important
6 thing he could do at this time was --

7 MR. JACKSON: Objection.

8 THE COURT: The objection is sustained. Move
9 on to your next question, Mr. Lally.

10 MR. LALLY: Sure.

11 BY MR. LALLY:

12 Q Now, you mentioned that there was some crime
13 scene tape that was set up around; is that correct?

14 A That is correct.

15 Q And how was that accomplished?

16 A Sergeant Goode and Detective Sergeant Lank put
17 up the crime scene tape.

18 Q And do you know what, if anything, they were
19 able to use to attach it to in order to set it up
20 around where more had been found?

21 A I believe they used a fire hydrant, a tree, a
22 flagpole and I'm not sure what else. I wasn't -- I
23 don't recall specifically what it was attached to.

24 Q And, with regard to -- you mentioned that
25 there were photographs that were taken prior to the

1 implementation of the leaf blower; is that correct?

2 A That is correct.

3 Q And if I could just ask a little bit about
4 that. As far as the leaf blower was concerned, why was
5 that a decision as far as that being an implement to
6 use at this particular scene?

7 A It was an evening scene. There was snow. I
8 had never processed a scene in the snow. I had seen a
9 leaf blower used in the snow. It's quite effective at
10 being controlled. So that's why -- it was readily
11 accessible. The scene was debilitating as we were on
12 scene with the weather. So it was piling up. And I
13 thought that was the best method at that time.

14 Q And, prior to the arrival of Sergeant Goode
15 back to the scene with the leaf blower, what, if
16 anything else, was done to sort of document the scene
17 at that time?

18 A In addition to photographs, what we did was --
19 I wasn't sure how the roadway ended. I wasn't sure if
20 there was a sidewalk, a curb, a berm or whether it was
21 just grass.

22 So Sergeant Lank and I dug out what I believe
23 is called a six-inch Cape Cod asphalt berm, exposed it
24 so we could get a better perspective of how far
25 Mr. O'Keefe might have been off the roadway.

1 MR. LALLY: Your Honor, may I approach the
2 witness?

3 THE COURT: Yes.

4 BY MR. LALLY:

5 Q Sir, I'm going to direct your attention to
6 what's currently marked as Exhibits 7, 10, 11, 12, 13,
7 15, 16, 17, 19, 20, 21, 22 and 23. Would you review
8 those to yourself and look up when you're finished.

9 A Okay.

10 MR. LALLY: Your Honor, may we approach?

11 THE COURT: Sure.

12 (Whereupon, there was a sidebar conference as
13 follows:)

14 MR. LALLY: Your Honor, what I'd like to do,
15 just to make Ms. Gilman's life a little bit easier,
16 is if I could publish them to the jury, referring
17 to the numbers that are currently on them and then
18 have them marked as the next subsequent exhibits.

19 THE COURT: All right. So you want to publish
20 them first and then we will mark them?

21 MR. LALLY: Just so I can refer to them as
22 Exhibit --

23 THE COURT: Is there any objection to doing
24 that?

25 MR. JACKSON: No.

1 THE CLERK: Can we all stay here for a second?
2 FTR is down right now. The official court reporter
3 obviously is here. Tori and I are working on FTR
4 but it's not recording as of right this second.

5 THE COURT: Okay.

6 THE CLERK: You can see that the clock is
7 frozen.

8 THE COURT: All right. Thank you.

9 THE CLERK: Thank you.

10 MR. LALLY: Thank you.

11 (Whereupon, the sidebar conference concluded.)

12 THE CLERK: Mr. Lally, hold on for a second.

13 THE COURT: I'll see counsel again at sidebar
14 on this issue.

15 (Whereupon, there was a sidebar conference as
16 follows:)

17 THE COURT: Do you need to call them anything
18 for Ms. Gilman? Can you just go over there and --
19 Madam Court Reporter is concerned that the record
20 is going to say whatever you just call them and
21 then we are going to --

22 MR. LALLY: Okay.

23 THE COURT: I agree with her. I think it will
24 be confusing.

25 MR. LALLY: Okay. Yes.

1 THE COURT: So just take a minute and go point
2 out which ones she has to put up or something.

3 MR. LALLY: Sure. I can do that. Yes.
4 Whatever works best.

5 THE COURT: Thank you.
6 (Whereupon, the sidebar conference concluded.)

7 MR. LALLY: May I approach the witness?

8 THE COURT: Yes.

9 Jurors, I told you before how important it is
10 that our record is clear. That's why I'm sort of
11 making this take longer than it would otherwise.

12 Mr. Lally, can you simply hand her a note,
13 telling her what numbers?

14 MR. LALLY: Yes, Your Honor. I'm writing the
15 numbers.

16 Your Honor, I would ask that the next 13
17 exhibits be marked, the 13 photographs in the book
18 be marked as the next 13 exhibits.

19 (Whereupon, photographs were entered and marked
20 Exhibits No. 21 through and including 32 in
21 Evidence.)

22 THE COURT REPORTER: Exhibits 21 through 32,
23 Your Honor.

24 THE COURT: Thank you. All right. You can
25 publish these.

1 MR. LALLY: May I return them to the witness,
2 as well, Your Honor?

3 THE COURT: Yes.

4 BY MR. LALLY:

5 Q I'm returning those to you.

6 MR. LALLY: Ms. Gilman, if I could have the
7 first of those photographs up on the screen? And
8 if you could enlarge that just a bit, Ms. Gilman?

9 BY MR. LALLY:

10 Q Now, Lieutenant, I don't believe that's the
11 first photograph before you but if you could locate
12 that within the pile?

13 A Sure.

14 Q My apologies.

15 A I believe that's Exhibit 30.

16 Q And, if you could, just describe for the jury
17 what, if anything, we are looking at on this exhibit,
18 sir.

19 A So that is in front of 34 Fairview Road in
20 Canton. It's looking westerly or the direction towards
21 Chapman Street. And it's documenting the conditions at
22 the time.

23 MR. LALLY: May I approach the witness, Your
24 Honor?

25 THE COURT: Yes.

1 BY MR. LALLY:

2 Q Lieutenant, at any point if I ask or if any
3 attorney asks you, this is a laser pointer. Just click
4 on there and point that at the screen. Okay?

5 A Yes.

6 MR. LALLY: Now, Ms. Gilman, if I could have
7 the next photograph, please?

8 THE WITNESS: That is simply documenting that
9 the number 34 is on the mailbox. That is 34
10 Fairview Road.

11 THE COURT: Do you have a number on that in
12 front of you?

13 THE WITNESS: I do. It's Exhibit 22. There
14 are two of these, I believe. I wasn't sure I had
15 the correct one. That would be 22. Yes.

16 BY MR. LALLY:

17 Q And what's depicted in that photograph, sir,
18 is that a fair and accurate portrayal of sort of the
19 scene in the roadway when you arrived that morning?

20 A It is. It's the mailbox with the No. 34 on
21 it. And it shows two vehicles in the driveway of 34
22 Fairview Road.

23 MR. LALLY: And, Ms. Gilman, the next
24 photograph.

25 Q And, if you could, Lieutenant, when you locate

1 this, indicate which exhibit we are looking at in this
2 one.

3 A That's Exhibit 28. It's a different angle of
4 the driveway, showing the third car in the driveway. I
5 wanted to document what was in the driveway at that
6 time.

7 Q Thank you, sir.

8 MR. LALLY: The next photograph, Ms. Gilman.

9 A Exhibit 29. And basically it documents the
10 same thing, the entirety of the house from I guess it
11 would be a westerly view and the three cars that were
12 in the driveway at the time I arrived.

13 MR. LALLY: And the next photograph,

14 Ms. Gilman.

15 A I believe that's Exhibit 31, and it's a
16 closeup of where Mr. O'Keefe was found. And you can
17 see the very light pink spotting that we thought may be
18 blood, and there was an object in the center, as well,
19 which we didn't know what it was at that time.

20 Q Subsequently, did you learn what that object
21 was?

22 A Yes.

23 Q And what did you learn it to be?

24 A It was a broken clear cocktail glass, and the
25 pink spot was frozen or coagulated blood.

1 MR. LALLY: The next photograph, Ms. Gilman.

2 A That's Exhibit 23. And it's basically showing
3 that the scene was trampled by rescue workers,
4 witnesses, et cetera, but you could still see, you
5 know, the pink spotting in the area where Mr. O'Keefe
6 was.

7 Q As far as footprints within the snow that you
8 observed, you indicated that the scene was trampled or
9 walked over by first responders, correct?

10 A Correct.

11 Q And the footprints that you observed, what
12 footprints did you -- sort of what areas around where
13 Mr. O'Keefe's -- where it was indicated to you that
14 Mr. O'Keefe's body was where those footprints were
15 located.

16 A They were located between the street and where
17 Mr. O'Keefe was found.

18 Q And, as far as between where Mr. O'Keefe was
19 found and the house or the residents of 34 Fairview,
20 what, if any, footprints did you observe in that area
21 of the snow?

22 A I didn't observe any footprints at that time.

23 MR. LALLY: Ms. Gilman, if I could ask for the
24 next photograph, please.

25 A That is Exhibit 24, and it's showing a

1 westerly shot of the scene. Mr. O'Keefe was found in
2 this area here, and it depicts the wind blowing in that
3 direction at the time.

4 Q And it's probably self-evident, but it depicts
5 the wind blowing in that direction based on what?

6 A The flag flying.

7 MR. LALLY: The next photograph, Ms. Gilman.

8 A That is Exhibit 20. That is the -- I believe
9 it's called a six-inch Cape Cod asphalt berm that
10 separated the roadway from the property of 34 Fairview.
11 And this is the long look to where Mr. O'Keefe was
12 discovered.

13 Q Thank you, sir.

14 MR. LALLY: And the next photograph,
15 Ms. Gilman?

16 A Again, that's a closeup of one of the exhibits
17 we saw earlier. Again, you can see the spotting and
18 the glass here. This is -- I believe this is Exhibit
19 26.

20 Q Thank you, sir.

21 MR. LALLY: Next photograph, Ms. Gillman?

22 A This is Exhibit 27, and it's what we believed
23 was frozen or coagulated blood spotting.

24 MR. LALLY: And the next photograph,

25 Ms. Gilman?

1 A And that's a different view, a closeup of the
2 scene. That's Exhibit 32.

3 Q Thank you, sir.

4 MR. LALLY: And the next photograph,
5 Ms. Gilman?

6 A That is when we first uncovered the berm, the
7 six-inch berm. And it's just a smaller picture,
8 closeup, of that berm. It's Exhibit 25.

9 Q With reference to the sort of uncovering of
10 the berm as you've described it, what, if anything, did
11 you use to uncover the berm?

12 A I believe we just used our foot to uncover
13 that.

14 MR. LALLY: And what I believe is the last
15 photograph, Ms. Gilman.

16 A This is the location from the berm to where
17 Mr. O'Keefe was found. It's just a long view, and it's
18 Exhibit 21.

19 Q Thank you, sir.

20 MR. LALLY: May I approach, Your Honor, just
21 to retrieve?

22 THE COURT: Yes. Yes.

23 BY MR. LALLY:

24 Q Now, as far as the cruisers with the Canton
25 Police Department, what, if any, sort of recording

1 equipment are they equipped with?

2 A With dash cameras, WatchGuard cameras.

3 Q What, if anything, have you done to review
4 some of that dash camera footage from the cruisers from
5 that morning?

6 A I reviewed all of it.

7 Q And, specifically, have you reviewed dash
8 camera footage from -- excuse me -- from the 683
9 cruiser, Officer Saraf's cruiser?

10 A Yes, I did.

11 MR. LALLY: Your Honor, if I may, I would ask
12 that -- that's already been marked as Exhibit 12.
13 I would ask that a portion of that be played for
14 the jury at this time.

15 THE COURT: Okay.

16 MR. LALLY: And, Ms. Gilman, if you could fast
17 forward this to approximately 57 minutes or so into
18 the...

19 (Whereupon, the video is played.)

20 BY MR. LALLY:

21 Q Lieutenant Gallagher, do you recognize what's
22 up on the screen in Exhibit 12?

23 A I do.

24 Q And what do you recognize it to be?

25 A That's the video I referred to of Canton

1 Cruiser 683. It's dated January 29th, 2022 at, the
2 time is correct, 7:02:54.

3 Q And, around this time with this video from
4 Officer Saraf's cruiser, what, if anything, did you
5 observe occurring within that cruiser camera footage?

6 A I believe it's at approximately 57:17, you'll
7 see Sergeant Goode begin to mark out the scene with
8 yellow crime scene tape. You'll see him in front of
9 the cruiser at first. Him, Officer Mullaney and
10 Sergeant Lank walk off, and then you'll see
11 Sergeant Goode stretching out the crime scene tape.

12 Q And, if you could, sir, as the video is
13 playing, using the laser pointer that you have before
14 you, just draw the jury's attention to who, if anyone,
15 you observe or recognize within that video.

16 A Yes.

17 MR. LALLY: Ms. Gilman, if you could?

18 (Whereupon, the video is played.)

19 MR. LALLY: Ms. Gilman, if you could just
20 pause for one second?

21 A There's two officers with crime scene tape. I
22 believe this is Officer Mullaney, but I'm not sure. I
23 know this is Sergeant Goode.

24 MR. LALLY: My apologies, Ms. Gilman. If you
25 could hit play again?

1 (Whereupon, the video is played.)

2 A That's Detective Sergeant Lank in the lighter
3 coat. Sergeant Goode and Lank, they walk off camera.
4 You'll see Sergeant Goode come into the picture right
5 here, stretching out the crime scene tape. You'll see
6 it flapping in the wind there. You see it raise way up
7 because of the wind. This is some crime scene tape
8 here. And I'm not sure what they affixed it to,
9 whether it was the cruiser at that point or not. But
10 you can see the crime scene tape going across the scene
11 that way.

12 MR. LALLY: Ms. Gilman, if you could pause it
13 right there for a moment.

14 Q So, Lieutenant Gallagher, in addition to sort
15 of the crime scene tape that you observe in this video,
16 what, if anything else, did you get from the station to
17 attempt to sort of secure the scene or place at the
18 scene?

19 A I'm not sure what you mean.

20 Q Did you get a tent at the station?

21 A Excuse me?

22 Q A tent at the station?

23 A No, I didn't.

24 Q You didn't. Okay.

25 A No.

1 Q And why not?

2 A I had a tent with me from home. It was a
3 personal 8x8 tent.

4 Q My apologies, sir. So at any point in time,
5 were you able to set up that tent that you retrieved
6 from your home?

7 A Due to the weather conditions, we did not set
8 it up because it would have required officers holding
9 it down and we didn't think the top would stay on.

10 Q Okay. And, again, it may be pretty self-
11 evident; but, when you say "due to the weather
12 conditions," what, if anything, about the weather
13 conditions prevented you from setting that tent up over
14 the snow?

15 A High winds shifting directions of a large
16 amount of snow falling.

17 MR. LALLY: Now, Ms. Gilman, if I could ask if
18 you could just pull forward in that video to about
19 the one-hour-seven-minute mark. And if you could
20 hit play for a minute.

21 (Whereupon, the video is played.)

22 Q Lieutenant, what, if anything, are we looking
23 at in this portion of the video?

24 A If you look closely, it's the crime scene tape
25 that's blowing around. Right now, you can't see it or

1 you cannot see it from here.

2 Q And is this around the point where the
3 decision was made to take that down; is that correct?

4 A It was later on I observed the same thing and
5 I told the officers it wasn't doing any good at that
6 time. And there was nobody to keep out of the scene at
7 that point. It was only police personnel on the scene.

8 Q Thank you, sir.

9 MR. LALLY: Ms. Gilman, you can stop and take
10 it down. Thank you very much.

11 Q Now, with reference to the implementation of
12 the leaf blower, was that memorialized in any way, as
13 well?

14 A Yes. I had Sergeant Goode take a video since
15 we were improvising, using something I wasn't familiar
16 with being used before in case there were any questions
17 on how it was deployed. I had Sergeant Goode take a
18 short video.

19 Q And there's sort of several different short
20 video clips of that process; is that fair to say?

21 A There is at least one that I know of.

22 MR. LALLY: Your Honor, may I approach?

23 THE COURT: Yes.

24 BY MR. LALLY:

25 Q Showing you a disk, do you recognize that?

1 A I don't recognize it. I haven't seen this
2 disk before.

3 MR. LALLY: Your Honor, may we approach?

4 THE COURT: Okay.

5 (Whereupon, there was a sidebar conference as
6 follows:)

7 MR. LALLY: So, Your Honor, in the interest of
8 time, I can tell the Court that the disk contains
9 the videos we were just talking about. I would
10 like to have it marked as an exhibit before I play
11 it for the witness, who can authenticate it because
12 he sent it. If there is any issue with that --

13 MR. JACKSON: No. From a procedural;
14 standpoint, I don't care. I just want to make sure
15 I understand that the disk contains the two videos.

16 MR. LALLY: I think it's more than two.

17 MR. JACKSON: You think it's more than two?

18 MR. LALLY: Well, they're broken up into -- I
19 mean, it's all sort of the same footage but it's
20 broken up into --

21 MR. JACKSON: Small snippets.

22 MR. LALLY: Yes.

23 MR. JACKSON: I don't have any problem with
24 it.

25 THE COURT: All right. While we are on

1 exhibits, he testified to the first photograph
2 being Photo No. 20, and 20 is Becker's report from
3 the other day. So did you inadvertently give him
4 what had been previously marked 20 in that pile
5 just now without any sticker on it? Because these
6 photos --

7 MR. LALLY: I may have.

8 THE COURT: -- I have it we started at 21. Is
9 that right, Tori? So if there is one in there with
10 a sticker on it, that's 20. Yes, were removed. He
11 indicated what all the others were.

12 MR. LALLY: Okay.

13 THE COURT: He said there were two of them.
14 So it's probably one of these, anyway. It's
15 probably a duplicate. If you all want to look at
16 that at a break and figure that out, you need to do
17 that.

18 MR. LALLY: Okay.

19 THE COURT: So you can go ahead and put that
20 in.

21 MR. LALLY: Okay.

22 (Whereupon, the sidebar conference concluded.)

23 MR. LALLY: Your Honor, the Commonwealth seeks
24 to introduce this and admit as the next exhibit.

25 THE COURT: Okay.

1 (Whereupon, crime scene video on CD was entered and
2 marked Exhibit No. 33 in Evidence.)

3 THE COURT REPORTER: Exhibit 33.

4 THE COURT: Thank you.

5 MR. LALLY: My apologies, Your Honor. May we
6 approach just briefly?

7 THE COURT: Okay. Jurors, feel free to stand
8 up and stretch.

9 (Whereupon, there was a sidebar conference as
10 follows:)

11 MR. LALLY: I believe what happened was
12 Madam Court Reporter inadvertently marked the first
13 photograph in the set today as 20. So now we have
14 two 20s. So before we go on --

15 THE COURT: No, she did not. That has 4/29.
16 That is yours.

17 MR. LALLY: Oh, I'm sorry.

18 THE COURT: This is where we started today in
19 marking them. That's probably a duplicate.

20 MS. LITTLE: I think you said we had 13, but
21 we actually marked -- that might just be the last
22 one.

23 MR. LALLY: I just don't want to keep marking
24 exhibits and further compound the problem. That's
25 the only reason I asked to --

1 THE COURT: These all have today's dates on
2 them. That was premarked by you as 20. So you
3 can --

4 MS. MC LAUGHLIN: Do we already have a 20?

5 THE COURT: We do have a 20. It's Becker's
6 report.

7 MS. MC LAUGHLIN: Could we amend this to be
8 the last sequential order exhibit?

9 THE COURT: How about we do it as 20A because
10 he has referenced it as 20.

11 MR. LALLY: Okay.

12 THE COURT: At least it will have that number
13 that corresponded with what the jurors saw. Okay?
14 Is there an objection to that?

15 MR. JACKSON: No.

16 THE COURT: We will do that. Hand that to
17 Madam Court Reporter to be marked.

18 (Whereupon, the sidebar conference concluded.)

19 (Whereupon, photograph was entered and marked
20 Exhibit No. 20A in Evidence.)

21 MR. LALLY: Your Honor, with the Court's
22 permission, may I publish what has now been marked
23 as, I believe, Exhibit --

24 THE COURT REPORTER: 20A.

25 MR. LALLY: Twenty. I'm sorry. The last

1 exhibit, the disk, if I could publish that to the
2 jury?

3 THE COURT: Yes.

4 MR. LALLY: Ms. Gilman, if you could just
5 pause it right there?

6 (Whereupon the video is played and paused.)

7 BY MR. LALLY:

8 Q And, Lieutenant Gallagher, do you recognize
9 what is up on the screen?

10 A I do.

11 Q What do you recognize it to be?

12 A That's me operating the leaf blower at the
13 scene where John O'Keefe was discovered.

14 Q And who is operating the leaf blower in these
15 videos?

16 A I am.

17 Q And who, if anyone else, from your department
18 is sort of present while this process is going on?

19 A Detective Sergeant Lank is documenting and
20 Sergeant Goode is also assisting.

21 MR. LALLY: Ms. Gilman, thank you very much.

22 If you could play it?

23 (Whereupon, the video is played.)

24 A As you can see, it removes the snow. I was
25 removing the snow layer by layer. And right here you

1 can see it exposing the cocktail glass. You're going
2 to see red spots appear as I remove it layer by layer.
3 These pink spots start to turn the dark red spots. As
4 you see, we can control it. We were concerned with
5 what --

6 MR. JACKSON: Objection.

7 THE COURT: Wait for a question.

8 A As you can see, it just takes it layer by
9 layer.

10 MR. JACKSON: Objection.

11 THE COURT: Stop for a second. Mr. Lally,
12 Ms. Gilman, can you pause it?

13 (Whereupon, the video is paused.)

14 THE COURT: So if you have a question for the
15 lieutenant, Mr. Lally, or are you asking him to
16 narrate the whole video?

17 MR. LALLY: No, Your Honor.

18 THE COURT: Then you can pause. It's great if
19 you can keep your voice up over the sound of the
20 video.

21 THE WITNESS: I understand, Your Honor.

22 MR. LALLY: So do you have a question,
23 Mr. Lally?

24 MR. LALLY: Just briefly at this point.

25 BY MR. LALLY:

1 Q So, Lieutenant Gallagher, with respect to as
2 you're conducting this whole process, what, if
3 anything, are you concerned about as far as throughout
4 this process of trying to locate evidence?

5 A We were concerned with the weather destroying
6 biological evidence at that time.

7 Q So what, if anything, were you doing with
8 regard to that?

9 A We were trying to take the snow that had
10 fallen over the blood, and we were trying to remove it
11 to expose the blood.

12 Q And fair to say as far as during this sort of
13 removal process, how much of the snow were you able to
14 sort of sift layer by layer with the leaf blower that
15 you had?

16 A We could control how much I wanted to sift. I
17 did it as -- I started out as gently as possible. If
18 more snow needed to be removed, I got a little more
19 aggressive.

20 Q Thank you, sir.

21 MR. LALLY: Ms. Gilman, if you could go to the
22 next video.

23 (Whereupon, the video is played.)

24 MR. LALLY: Ms. Gilman, if you could play the
25 third video, please?

1 (Whereupon, the video is played.)

2 MR. LALLY: Okay. Ms. Gilman, if you could
3 play the last video, please?

4 (Whereupon, the video is played.)

5 MR. LALLY: Thank you. Mr. Officer, you can
6 put the lights back up. Thank you, sir.

7 BY MR. LALLY:

8 Q Now, Lieutenant, with reference to that
9 process, how far deep into the snow were you able to go
10 with using that leaf blower in that manner?

11 A We got almost to the ground, bare ground.

12 Q As far as sort of a surface area, like how
13 much of that area where Mr. O'Keefe was found were you
14 able to use the leaf blower?

15 A It was approximately a 6x6, 7x7 area.

16 Q From that area, what, if anything -- in
17 addition to the cocktail glass pieces that you already
18 testified to and the red spots on the ground, what, if
19 anything else, did you observe?

20 A We didn't observe anything at that point,
21 anything else. Just the blood and the glass.

22 Q Now, Lieutenant, during the time that you were
23 on scene with reference to the neighborhood in general,
24 how many people did you observe sort of come out of
25 their house at any point in time that you're aware of?

1 A I didn't observe anybody ever come out of
2 their house.

3 Q And that includes the residence that you were
4 in front of, as well as any other residences along that
5 street; is that correct?

6 A That is correct.

7 Q Now, at some point, about how long a period of
8 time, if you know, were you on scene that particular
9 morning?

10 A Approximately 50 minutes. Forty-five to 50
11 minutes.

12 Q And, following that, where did you go?

13 A We brought the exhibits back to Canton Police
14 Headquarters.

15 Q And, by that, you mean the glass and what you
16 had collected of the blood?

17 A Yes. We took six blood samples. Yes.

18 Q Okay. And how were you able to sort of
19 collect the blood samples on the scene?

20 A Well, the blood samples, because they were
21 frozen, we debated on how to collect it. We didn't
22 think swabbing was going to be easy to do with it
23 frozen. So we decided on finding some type of
24 temporary plastic evidence container. We were able to
25 find large cups, and we took six samples. We bagged

1 the six samples and Sergeant Lank transported them back
2 to Canton Police Headquarters.

3 Q And, with respect to those samples and piece
4 of glass that you located, eventually what, if
5 anything, was done with those? Well, first and
6 foremost, when you came back to the Canton Police
7 Station, what, if anything, did you do with them there?

8 A Chief Berkowitz was at headquarters, and we
9 had a meeting in the detective sergeant's office.

10 Q What I'm asking, sir, is with reference to
11 those items that you took back from Fairview, when you
12 got back to the station, what, if anything, did you do
13 with them?

14 A Sergeant Lank placed them into evidence.

15 Q And then subsequent to Sergeant Lank placing
16 them into evidence, at some point where did they go?

17 A They were turned over on February 1st to the
18 Massachusetts State Police Crime Lab.

19 Q And was that something where they were driven
20 to the crime lab or did the crime lab come to the
21 station?

22 A The crime lab was already at the station.

23 Q Now, you go back to the police station and you
24 have some conversation with your chief; is that
25 correct?

1 A That is correct.

2 Q And what was your chief's name?

3 A Chief Berkowitz. Kenneth Berkowitz.

4 Q And, following that conversation, at some
5 point, did you return to Fairview Road that morning?

6 A I did.

7 Q And who, if anyone, did you go there with?

8 A I accompanied Detective Sergeant Lank.

9 Q And, when you arrived, where did you go with
10 reference to the residence?

11 A We went into a side door, and there were
12 people in the kitchen at that time. I believe it was
13 the kitchen area.

14 Q And did you know any of the people that were
15 in the kitchen?

16 A I did.

17 Q And who, if anyone, did you know?

18 A Who I remember specifically was Jen McCabe,
19 who I don't know personally but I know because that's
20 who Sergeant Lank arrived to talk to. And I knew
21 Brian Albert in a professional sense.

22 Q Brian Albert is also a police officer; is that
23 correct?

24 A He's a Boston police officer, yes.

25 Q Now, as far as any other people, who, if

1 anyone else, were you introduced to when you came into
2 the kitchen area?

3 A I wasn't introduced to anybody. All I know is
4 that there were five or six people there.

5 Q And are you familiar with a gentleman by the
6 name of Brian Higgins?

7 A I am.

8 Q And how are you familiar with him?

9 A He is an ATF agent who I worked with when I
10 was assigned to DEA. And he later had a satellite
11 office at our P.D. And I have since come to know him
12 personally.

13 Q In reference to your work with the DEA, how
14 long did you work with the DEA?

15 A Thirteen years.

16 Q And so Mr. Higgins. Was he present in the
17 home on Fairview when you arrived there that morning?

18 A I don't recall him. When I arrived
19 originally, definitely not. I don't recall if he was
20 there when we arrived about 9:00 a.m.

21 Q So you don't recall him being there at all?

22 A I don't recall specifically. I never had any
23 conversation with him.

24 Q Now, you had made some mention of February
25 1st, a few days later at your department, there were

1 members from the crime lab that came there, correct?

2 A That is correct.

3 Q And what, if anything, did they come there to
4 do?

5 A They were assisting the state police in
6 executing a search warrant on a motor vehicle.

7 Q And where was that motor vehicle in relation
8 to your department?

9 A It was in our sally port.

10 Q If you could, just describe for the jury, sir,
11 what is a sally port specifically at the Canton Police.
12 Like, where is it located, what does it look like?

13 A Sure. It's on the rear portion of our police
14 department. There are large overhead doors that are
15 numbered one, two, three and four. We only have two
16 bays. So the sally port that the vehicle was in,
17 typically, we enter through Door 4 and you would exit
18 through Door 3. Those doors, overhead doors, can only
19 be controlled by a computer in the dispatch center, and
20 it's where we bring in our prisoners. Once the sally
21 port goes up, you enter, close the door. The area is
22 secure. The rest of the P.D. is only accessible by
23 access card, key access card.

24 Q You mentioned sort of the overhead garage
25 doors are accessible only by the dispatch area; is that

1 correct?

2 A That is correct. The computer in the dispatch
3 area.

4 Q And that as far as the entrance from the
5 department, how, if at all, is that controlled?

6 A There is a -- to the right of Sally Port 4,
7 there is a keycard access door.

8 Q Now, with reference to that sally port area,
9 what, if any, cameras are located in that area?

10 A I know there's cameras in the area. I don't
11 specifically know where they are. I typically don't
12 look for them. I know it's under our surveillance, as
13 most of our department is.

14 Q And have you reviewed at least a portion or
15 the entirety of the sally port video from that
16 particular day, February 1st?

17 A I've seen a small portion, yes.

18 MR. LALLY: May I approach the witness, Your
19 Honor?

20 THE COURT: Yes.

21 BY MR. LALLY:

22 Q Do you recognize what's depicted on that
23 particular flash drive?

24 A Yes.

25 Q What is depicted on that, sir?

1 A C.P.D. sally port videos.

2 MR. LALLY: The Commonwealth would seek to
3 introduce and admit as the next exhibit.

4 THE COURT: Any objection?

5 MR. JACKSON: No, Your Honor.

6 (Whereupon, thumb drive with video from sally port
7 was entered and marked Exhibit No. 34 in Evidence.)

8 THE COURT REPORTER: Exhibit 34.

9 MR. LALLY: Your Honor, if I may at this time
10 seek to publish a portion of Exhibit 34 to the
11 jury? May I have one moment, Your Honor?

12 THE COURT: Yes.

13 MR. LALLY: Ms. Gilman, could I have the
14 portion that's February 1st? It covers 12:00 a.m.
15 to 12:00 noon.

16 Ms. Gilman, if I could ask you to just fast
17 forward that to approximately 9:11 a.m. I'm sorry.
18 If you could just pause for one second.

19 THE COURT: Jurors, why don't we take a 10-
20 minute recess.

21 (Whereupon, the jury is escorted from the courtroom
22 for a brief recess.)

23 THE COURT: All right. So we are still in
24 session. So in presenting the exhibits to be
25 marked, please take them out of the plastic and out

1 of the envelopes because the actual item, itself,
2 gets the sticker on it.

3 We are having all sorts of difficulties. FTR
4 is not working. I am not sure if we are getting
5 any Internet here. Are we all set with this? Is
6 this something -- do you want to use the flash
7 drive that you put in? Would that help?

8 MR. LALLY: No. I think the issue is sort of
9 the size of the video. So bringing it up can be --
10 although my issue is as I was standing over there,
11 I couldn't really see anything as far as the
12 screen. It doesn't appear that dark when you put
13 it on a laptop.

14 THE COURT: I couldn't open any of those this
15 morning on my work computer.

16 All right. Why don't we take a 10-minute
17 recess.

18 (Whereupon, there was a brief recess taken.)

19 (Court resumes.)

20 (Defendant present. Jury present.)

21 THE COURT: Mr. Lally, are we all set?

22 MR. LALLY: Yes. Mr. Officer, it may be a
23 little bit -- if you could please put the lights
24 back on? Thank you, sir.

25 BY MR. LALLY:

1 Q Lieutenant Gallagher, again, from this video
2 from approximately 9:11 in the morning, do you
3 recognize what's up on the screen?

4 A I do.

5 Q If you could, just using that laser pointer,
6 direct the jury's attention to what, if anything, of
7 significance you observe in this particular pause of
8 this video?

9 A This is our sally port. You would come in
10 Sally Port 4. This is Sally Port 3, like I said
11 earlier. This is the vehicle they were executing a
12 search warrant on and this is the crime scene tape.

13 Q And, as far as personnel from the state police
14 that were present there, who, if anyone, was present
15 there that you knew or were aware of?

16 A I knew Trooper Proctor was there, and I knew
17 the criminologist was there and a photographer. I
18 don't know them by name.

19 Q So a couple people from the lab, one taking
20 photos, one criminalist; is that correct?

21 A Correct.

22 Q As well as Trooper Proctor?

23 A That's correct.

24 Q And do you know Trooper Proctor?

25 A I knew of him. I don't believe I ever met him

1 prior to this. He has worked some cases with our
2 detectives. I knew he was assigned to the D.A.'s
3 office. But I'm not sure if I ever met him prior to
4 this case.

5 Q Now, with reference to the vehicle, what, if
6 anything, was placed around the vehicle or did you
7 observe around the vehicle when you saw it?

8 A This crime scene tape, as you see the yellow
9 tape right there.

10 Q And, just to be clear, the sort of -- which
11 part of the vehicle is sort of in the lower foreground
12 of this video?

13 A This is the passenger side rear of the
14 vehicle.

15 Q Now, at some point over the course of the time
16 that you were there on February 1st, what, if any,
17 other sort of specialized units within the state police
18 were also present there?

19 A Eventually I think they call it the CARS team.
20 I think it's what I would call their accident
21 reconstruction team responding.

22 MR. LALLY: Now, Ms. Gilman, if I could ask
23 you to fast forward within that video to
24 approximately 9:44 a.m.

25 That's fine right there, Ms. Gilman. Just a

1 little bit back. Right there. If you could just
2 hit play?

3 (Whereupon, the video is played.)

4 Q Now, Lieutenant, during this part of the
5 video, in addition to the people that you've already
6 referenced, who, if anyone, else was in the garage at
7 that time?

8 A It's hard for me to say. I believe this is
9 the criminalist. I believe this is Trooper Proctor.
10 This is me with the gray shirt, walking in. That's me
11 right there. And that's Trooper Proctor and I believe
12 a photographer or another criminologist is here. I
13 don't know what their title is.

14 Q Now, at some point during the execution of the
15 search warrant, what, if any, issues did you become
16 aware of with regard to the criminalists?

17 A They were having trouble in trying to remove
18 the housing to the taillight, passenger side taillight.
19 They were having difficulty removing it.

20 Q And what, if any, assistance did you offer
21 with regard to that?

22 A I told them that we had an officer working who
23 was in charge of our fleet maintenance and our mobile
24 operations unit who probably had the tools to do it,
25 and he also had vast, extensive experience in auto

1 body.

2 Q And who was that, sir?

3 A That's Officer Brian Wanless.

4 Q And what, if anything, did you do with
5 reference to Officer Wanless in regard to that area of
6 the car?

7 A I asked dispatch to ask him to return at
8 approximately I think it was 9:50.

9 MR. LALLY: And, Ms. Gilman, if I could ask
10 you to, if it's not already there, move it up to
11 9:51 a.m.

12 (Whereupon, the video is played.)

13 MR. LALLY: If you could just pause it for one
14 moment, Ms. Gilman.

15 (Whereupon, the video is paused.)

16 Q So with reference to this particular portion
17 of the video, Lieutenant, if you could direct the
18 jury's attention to when you see Officer Wanless and
19 when you see him come over towards that area of the
20 vehicle.

21 MR. LALLY: And, Ms. Gilman, for your
22 purposes, what I would ask is we run this from
23 essentially 9:51 a.m. through to about 9:58:30.

24 (Whereupon, the video is played.)

25 A This is Officer Wanless right here. He

1 examines it and he leaves momentarily. He dons a pair
2 of gloves. And he exits, and he's going to come back
3 with some tools. Here he comes. He places his toolkit
4 on the tailgate.

5 MR. JACKSON: Objection, Your Honor.

6 THE COURT: You can pause it and ask a
7 question.

8 (Whereupon, the video is paused.)

9 MR. LALLY: Sure.

10 BY MR. LALLY:

11 Q From your review of this video, what, if
12 anything, do you observe Officer Wanless do with
13 reference to that rear passenger side taillight?

14 A He reenters the sally port with some tools and
15 he places his toolkit down on the tailgate of the
16 Lexus.

17 Q And then what, if anything, do you observe him
18 do after that?

19 A He begins to work on the housing of the
20 taillight.

21 Q Thank you.

22 MR. LALLY: Ms. Gilman, if you could press
23 "play."

24 (Whereupon, the video is played.)

25 MR. LALLY: Thank you, Ms. Gilman. You can

1 take that down.

2 Q Now, Lieutenant, with respect to an item that
3 you and the other officers recovered from 34 Fairview
4 on the 29th, the criminalist that was depicted in that
5 video, was that who you gave those items to?

6 A I believe so, yes.

7 Q So you gave those items to her directly,
8 correct?

9 A Yes.

10 Q Now, as far as that particular -- I believe
11 you testified earlier that you were looking to preserve
12 biological matter; is that correct?

13 A Yes.

14 Q And fair to say that your search of that area
15 was confined to sort of where it was described to you
16 Mr. O'Keefe had been found, correct?

17 A That is correct.

18 Q Now, turning back again just to February 1st
19 -- I'm sorry to jump around. But, back to February
20 1st, at some point you mentioned there was a crash
21 reconstructionist from the state police; is that
22 correct?

23 A That's correct.

24 Q And what, if anything, did you aid or assist
25 or facilitate with reference to crash reconstructionist

1 around the police station.

2 A When they wanted to test the vehicle, I
3 secured the parking lot. I advised no cruiser to
4 return to the station, and I blocked the entryway with
5 my marked cruiser and remained in my cruiser.

6 Q And, later on on that day of February 1st,
7 where, if anywhere, did you go with respect to the
8 crash reconstructionist?

9 A We went to 34 Fairview.

10 Q In addition to yourself and the trooper from
11 the crash reconstruction, who, if anyone, else went
12 with you?

13 A Trooper Proctor was present.

14 Q And why did you go along with the troopers to
15 that location?

16 A Just so there was a Canton officer present.
17 If any residents came out, I could communicate with
18 them.

19 Q And, to your knowledge, had Trooper Proctor
20 been to Fairview prior to that day?

21 A I have no knowledge if he had been there or
22 not.

23 Q What, if anything, did you direct either
24 Trooper Proctor or the crash reconstructionists to once
25 you were on scene?

1 A I brought them to the area of where
2 Mr. O'Keefe was found.

3 Q So you showed them where Mr. O'Keefe was
4 found?

5 A Yes.

6 Q Now, turning your attention -- well, when on
7 scene that day with Trooper Proctor and the crash
8 reconstructionists, what, if anything, did you observe
9 them to be doing that day?

10 A I believe they were discussing -- they were
11 trying to place a drone up in the air I believe to map
12 out the area.

13 MR. JACKSON: Objection.

14 THE COURT: Did you see that? Do you want me
15 to strike the "I believe they were trying to"?

16 MR. JACKSON: That would be perfect.

17 THE COURT: All right. So that will be
18 stricken, but your observation may remain.

19 BY MR. LALLY:

20 Q Now, with reference -- if I could draw your
21 attention to February 4th of 2022. Were you working
22 that day?

23 A I wasn't.

24 Q Okay. And, at some point, did you receive a
25 call in regard to this case, this investigation?

1 A I did.

2 Q And who, if anyone, called you?

3 A Chief Berkowitz.

4 Q And what, if anything, did Chief Berkowitz
5 indicate to you?

6 A He asked me if I was working. When I told him
7 no, he asked who was.

8 Q And who, if anything, did you indicate to him
9 was working?

10 A I told him Detective Sergeant Lank was
11 working.

12 Q And, as far as -- what, if anything, was that
13 call in reference to, if you know?

14 A He stated he was driving in the area of 34
15 Fairview because of the warm weather and the warm rain
16 in the last couple of days.

17 Q And what, if anything, did he indicate to you
18 that he saw?

19 MR. JACKSON: Objection.

20 THE COURT: Sustained. I'm going to see you
21 at sidebar.

22 (Whereupon, there was a sidebar conference as
23 follows:)

24 THE COURT: Isn't this just a straight hearsay
25 objection?

1 MR. JACKSON: Correct.

2 THE COURT: So I understand that this might be
3 the knowledge of the police officer, but haven't
4 laid a foundation for that.

5 MR. LALLY: Okay. Really, all I'm trying to
6 establish with this witness, Your Honor, is that
7 essentially there was -- I trying not to get too
8 much into it. It's just more he then directs
9 Berkowitz to Lank. Lank recovers the items.
10 That's all.

11 THE COURT: So you've got Lank testifying?

12 MR. LALLY: Correct.

13 THE COURT: Did Lank give the item to this
14 witness?

15 MR. LALLY: No. So Lank photographs the item
16 and leaves it in place until state police shows up.
17 Sergeant Kenny is the one who comes and retrieves
18 it.

19 THE COURT: Okay. Yes. You're not going to
20 do that.

21 MR. LALLY: No, no, no. All I want from him
22 is to get from Berkowitz to Lank. That's all.

23 THE COURT: And how do you get from Berkowitz
24 to Lank with him?

25 MR. LALLY: Because he is the one that

1 indicates to Chief Berkowitz that Lank is the one
2 who is working that day. So --

3 THE COURT: So you already have it?

4 MR. LALLY: Exactly.

5 THE COURT: Okay. So we'll end it at that
6 point.

7 MR. LALLY: Yes. Definitely.

8 (Whereupon, the sidebar conference concluded.)

9 BY MR. LALLY:

10 Q And so just to be clear, Lieutenant, you did
11 not go to Fairview Road on February 4th, 2022, correct?

12 A I did not.

13 MR. LALLY: I have nothing further for this
14 witness, Your Honor.

15 THE COURT: All right. Cross-examination.

16 MR. JACKSON: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. JACKSON:

19 Q Good morning, Lieutenant.

20 A Good morning.

21 Q When was the first time you were ever
22 interviewed about your conduct on this case, your
23 involvement in this case?

24 A I don't recall.

25 Q It was about a month ago, wasn't it, April

1 3rd, 2024?

2 A When I was interviewed by -- I don't know who
3 you're referring to.

4 Q A formal interview by any law enforcement
5 agency.

6 A Oh, I was never, yeah, until about a month
7 ago, I was not interviewed, correct.

8 Q And that interview was conducted by whom?

9 A I met at the D.A.'s office with the
10 prosecutor, Adam Lally.

11 Q And there was also a state trooper there?

12 A There was.

13 Q Lieutenant Tully?

14 A Correct.

15 Q So Michael Proctor never formally interviewed
16 you about your involvement in the case?

17 A No, sir.

18 Q He never interviewed you about your
19 involvement on the morning of January 29th, 2022?

20 A No, sir.

21 Q He never interviewed you about your recovery
22 of any physical evidence at the scene?

23 A No, sir.

24 Q Which would include the bloodstains as well as
25 the piece of drinking glass?

1 A That's correct.

2 Q Okay. He never interviewed you about where
3 that evidence ultimately went and how it made its way
4 back to Canton Police Department?

5 A He never interviewed me. No.

6 Q And his partner, Yuri Bukhenik, also -- I
7 won't go through the litany of things -- never
8 interviewed you, as well?

9 A Correct.

10 Q Thank you. And, until April 3rd, 2024, nobody
11 from the D.A.'s office had interviewed you either?

12 A That's correct.

13 Q Did you write a report about your involvement
14 in the case?

15 A Not on that particular day.

16 Q Did you write a report after that?

17 A Yes.

18 Q When did you write that report?

19 A Possibly January 2023. I believe it was the
20 request for the metadata acquisition of the photos
21 report.

22 Q Okay. Fair enough. Did you ever -- I'll
23 narrow my question. Did you ever write a report about
24 your involvement on the day at the scene?

25 A No, I did not.

1 Q So that's not documented, at least by you
2 that's not documented, anywhere?

3 A That's correct.

4 Q Did you take notes when you were at the scene?

5 A No.

6 Q Did you go back to the station and memorialize
7 your findings and your conduct at the scene by taking
8 notes back at the station?

9 A No, I did not.

10 Q So you have no notes and no report about
11 anything that happened at Fairview on the 29th?

12 A Not myself, no.

13 Q Okay. Were you ever instructed by any
14 superior -- you're pretty high up in the ranks. You
15 reported to whom?

16 A At that time, I reported to the deputy
17 chief/chief of police.

18 Q Right. Either the deputy chief or the chief?

19 A Correct.

20 Q Did either the deputy chief or the chief
21 instruct you, Lieutenant, don't worry about writing a
22 report in this case?

23 A No. They never said anything like that.

24 Q You would agree that it's one thing to respond
25 to a scene. It's another thing to actually gather

1 evidence at a scene?

2 A That's correct.

3 Q Especially a scene where it's a potential, at
4 that time, a potential homicide of a police officer?

5 A That's correct.

6 Q Part of the reason for annotating,
7 memorializing, exactly what evidence is recovered is so
8 you can relay that to other officers, correct?

9 A Correct.

10 Q So for instance, in your direct examination
11 just a few minutes ago, you said that you went back to
12 the scene at one point. What was the date where the
13 drone was considered?

14 A February 1st.

15 Q You go back to the scene on February 1st.
16 That's three full days after the event, correct?

17 A That is correct.

18 Q After the incident. And you said, I directed
19 them to where John O'Keefe's body was found, correct?

20 A Sure. Yes.

21 Q But, in fact, you never saw John O'Keefe's
22 body, did you?

23 A That's correct.

24 Q So you were giving them information that you
25 had no -- about which you had no personal knowledge,

1 correct?

2 A I had knowledge from other officers. I did
3 not see John O'Keefe at the scene. He was transported
4 to the hospital. But that is correct, yes.

5 Q Right. So you couldn't determine exactly how
6 he was positioned, right?

7 A Not precisely.

8 Q From head to toe, right?

9 A Not precisely.

10 Q Where his arms or his hands were?

11 A That is correct. Yes.

12 Q He's a six-foot-two man, correct?

13 A I don't know.

14 Q You don't even know that?

15 A I don't know his size, no.

16 Q If I told you that he's over six feet tall,
17 would you have any quarrel with that?

18 A If Mr. Lally told me, I would have -- I would
19 take it as fact.

20 Q Fair enough. For purposes of my question, you
21 don't want to take my word for it. But, for purposes
22 of this question, assuming that he's over six feet
23 tall, there's a better than six-foot margin for where
24 he would be situated in the snow, correct, from toe to
25 head?

1 A Correct.

2 Q And the details matter in a case like this.

3 Any investigation, the details matter?

4 A Surely.

5 Q Accuracy is vital in a homicide investigation,
6 correct?

7 A Correct.

8 Q You did find some blood droplets. We saw it
9 on the screen. Correct?

10 A Correct.

11 Q You also found part of a drinking glass,
12 correct?

13 A That is correct.

14 Q Did you engage or did you endeavor to make a
15 diagram of exactly where those items were found?

16 A No.

17 Q You're aware as a former -- you were the
18 former chief of detectives?

19 A I was a detective sergeant.

20 Q Detective sergeant. You were a supervisor
21 over detectives?

22 A Correct.

23 Q You're aware of what cross-coordinates are in
24 measuring a crime scene, correct?

25 A Yes.

1 Q You take a stable item like a flag pole, for
2 instance, that might be one, that doesn't move. You
3 measure exactly from a compass position exactly north
4 or exactly west the number of inches, maybe even down
5 to meters and millimeters if you use that. Instead of
6 inches, using meters, right?

7 A Yeah. We don't employ that process.

8 Q So you don't employ a process where you could
9 measure something from a known item north, south, east
10 or west, and then measure it from another known item
11 and have an exact cross-point of where --

12 A We don't typically exercise that in our
13 investigative unit.

14 Q You knew how to do that, though?

15 A Yes.

16 Q I mean, you've been trained on how to do that?

17 A Yes.

18 Q But you didn't employ that technique here?

19 A No.

20 Q So the glass, where the glass was found, is
21 sort of an estimate?

22 A Sure. Yes.

23 Q And where the blood was found, that's kind of
24 an estimate also?

25 A Yeah. We would guess that would be where his

1 body was. Yes.

2 Q Okay. You just used the word "guess."

3 A Yes.

4 Q But, if you had actually documented it using
5 cross-coordinates, you wouldn't have to guess; you
6 would know exactly where the tip of his head was, where
7 the tip of his toes were, correct?

8 A No.

9 Q Why not?

10 A Because he wasn't there when we got there.

11 Q Fair enough. When I say "you," I meant other
12 officers. If someone had employed that before he was
13 moved, they could have figured out exactly how he was
14 situated, where he was in that yard, correct?

15 A It would never happen. Lifesaving measures
16 come first. The officers are not going to start
17 measuring while first responders are conducting
18 lifesaving measures. It doesn't happen.

19 Q That's exactly right. But, once the body was
20 moved, for instance, Officer Saraf, who is literally
21 standing there, could have said, okay, I just saw the
22 tip of his head right here. He's now on the gurney.
23 He could have measured that, right?

24 A He could have, yes.

25 Q And then he could have said, tip of his goes

1 were right here, and he could have measured that?

2 A Yes.

3 Q And certainly, when there's no lifesaving
4 measures at play, you could have done the same thing
5 with the drinking glass and the blood spots?

6 A That's correct.

7 Q And, in terms of recovering those blood spots,
8 I'll get back to that in a second, but in terms of
9 recovering those blood spots, you indicated that you
10 used temporary evidence containers, correct?

11 A Plastic cups, I said. Yes.

12 Q Before responding to 34 Fairview -- and you
13 indicated that you were told to respond to 32 Fairview,
14 right?

15 A That is correct.

16 Q That was a mistake on either dispatch's part
17 or somebody?

18 A Correct.

19 Q But you figured out where to go once you got
20 there?

21 A Yeah. You could tell by the emergency lights.

22 Q It was Sergeant Goode who contacted you,
23 correct?

24 A That is correct.

25 Q And you were at home at the time?

1 A That is correct.

2 Q Which is why you needed to respond to Canton
3 P.D. to get some foul weather gear, correct?

4 A Correct.

5 Q You also contacted Brian Albert's neighbor, a
6 gentleman by the name of Tom Kelleher, correct?

7 A That is correct.

8 Q And you wanted to let him know that you were
9 responding over to the scene?

10 A Yes. He was the lieutenant in charge of
11 detectives at the time.

12 Q Lieutenant in charge of detectives and also
13 the man who lived directly across the street from
14 Brian Albert, correct?

15 A I would say there's two property lines he's
16 directly across from, 32 and 34.

17 Q Okay.

18 A But, yes, that vicinity.

19 Q Okay. Is there a reason that you didn't
20 contact Chief Berkowitz on that day to let him know
21 where you were responding? Why did you pick Deputy
22 Chief Kelleher?

23 A Because that would be my next call. Like I
24 said, he is the lieutenant in charge of detectives at
25 the time. We were responding to a possible crime

1 scene, a possible unattended death. He would be my
2 call.

3 Q The normal chain of command?

4 A Correct.

5 Q Okay. But you knew at the time that
6 Chief Berkowitz was actually out on leave, having been
7 injured on duty in some way?

8 A I don't recall that. Chief Berkowitz is
9 always present.

10 Q Not only did you respond to the scene, but you
11 were -- either you were tasked by one of your superiors
12 or you, as the ranking officer on -- I guess I should
13 ask this first. Forgive me.

14 Were you the ranking officer on scene when you
15 arrived?

16 A Yes, sir. I was.

17 Q Okay. So either having been tasked by one of
18 your superiors or because you were the ranking officer
19 on scene, did you take over the coordination of the
20 preservation of that crime scene?

21 A Yes, I did.

22 Q So others were sort of answering to you?

23 A Correct.

24 Q You indicated that you had never preserved a
25 crime scene in the snow before?

1 A That's correct.

2 Q Thirty years plus and your policing experience
3 is here in the Boston area?

4 A Correct.

5 Q It snows a lot?

6 A Sure.

7 Q In 30-plus years, you've never processed a
8 crime scene in the snow?

9 A No, I have not.

10 Q Lucky you.

11 A Well, we don't typically process our own crime
12 scenes. Sometimes we use the state police. Sometimes
13 we use Plymouth County detectives.

14 Q Okay. So save the state police or setting
15 them aside because they were not tasked on this call
16 yet --

17 A Correct.

18 Q -- you were then in charge of preserving this
19 crime scene, correct?

20 A That is correct.

21 Q What exactly did you do, if you can name the
22 categories, what exactly did you do to actually
23 preserve the entire crime scene?

24 A Sure. I can tell you that I had Sergeant
25 Goode move all the cars so I could photograph the

1 scene, document it by photo evidence. I told Detective
2 Sergeant Lank, make sure he has initial statements from
3 everybody present. And I -- that's basically what we
4 did prior to searching the scene, itself.

5 Q With regard to Sergeant Lank, you told him to
6 make sure that we had statements, your words, we had
7 statements from all of the witnesses that were at the
8 scene?

9 A Initial statements, yes.

10 Q Does that mean the people inside the house?

11 A Yes.

12 Q Maybe people across the street, if there were
13 people across the street?

14 A No. It didn't include them at the time. It
15 included people that were involved from the prior
16 night's incident out, I would call it.

17 Q At the time that you tasked Sergeant Lank with
18 this responsibility, did you know personally that you
19 were standing on property of Brian Albert?

20 A I did.

21 Q Did you also know that Sergeant Lank had an
22 ongoing and a longtime relationship with the Albert
23 family?

24 MR. LALLY: Objection.

25 THE COURT: Did you know that?

1 THE WITNESS: I know he knew them. I think
2 you're mischaracterizing the relationship.

3 BY MR. JACKSON:

4 Q Did you see a problem with having somebody who
5 knew the parties taking the initial statements from
6 those parties?

7 A Not at all. Sergeant Lank, no issue at all.

8 Q Not in your mind?

9 A Not in my mind.

10 Q Were you aware that before you got to the
11 location that Sergeant Lank had taken it upon himself
12 to already make contact with the individuals in the
13 house?

14 MR. LALLY: Objection.

15 THE COURT: I'll see you at sidebar.

16 (Whereupon, there was a sidebar conference as
17 follows:)

18 THE COURT: What is the objection?

19 MR. LALLY: First of all, knowledge of this
20 witness, whether or not he knows what Lank knew or
21 what Lank did prior to him getting there.

22 Secondly, I --

23 THE COURT: Is it in a report Lank wrote?

24 MR. LALLY: I'm sorry?

25 THE COURT: Is it in a report that Lank wrote

1 that he would have known about?

2 MR. JACKSON: Generally, yes. If he had
3 reviewed all the reports would know, this
4 lieutenant would know, as a supervisor that
5 Sergeant Lank had certain relationship or had a
6 relationship which he just testified to with the
7 Alberts.

8 THE COURT: I understand that. But your
9 question was whether he knew what he had done
10 before he got there.

11 MR. JACKSON: Correct. The only way that he
12 would know that is if Lank had informed him, I've
13 already interviewed these folks. And that's what I
14 want to find out; why did you task him to do
15 something that had already been done. If he says
16 "I didn't know," then I'll live with that.

17 THE COURT: All right. So the question that
18 was asked you can ask.

19 MR. JACKSON: Okay.

20 THE COURT: I'm going to allow it.

21 MR. LALLY: Okay.

22 MR. JACKSON: Thank you.

23 (Whereupon, the sidebar conference concluded.)

24 MR. JACKSON: Thank you, Your Honor. May I?

25 THE COURT: Yes.

1 BY MR. JACKSON:

2 Q Lieutenant, just before we went to sidebar,
3 I'd asked a quick question, were you aware at the time
4 that you tasked Sergeant Lank to go talk to the folks
5 in the house that he had already gone into the house to
6 talk to them?

7 A Yes, I did.

8 Q You indicated that one of the reasons that --
9 I'd like to move back. I'm bouncing around a little
10 bit. I apologize.

11 A I understand.

12 Q One of the things you talked about was the
13 preservation of the crime scene and the lack thereof
14 because of the inclement conditions?

15 A Correct.

16 Q There was wind blowing from all directions,
17 correct?

18 A Yes.

19 Q There was snow falling?

20 A Yes.

21 Q It was icy cold out?

22 A Yes.

23 Q There was already snow accumulated on the
24 ground, about four inches, you said?

25 A At least. It was different spots because of

1 the wind drifts.

2 Q Wouldn't that be even more of a reason in a
3 potential homicide investigation to adequately preserve
4 the scene as best as you possibly could?

5 A Of course.

6 Q Wouldn't you want to, for instance, protect
7 the area? You mentioned the tent?

8 A Yes.

9 Q Wouldn't you want to make sure that anybody
10 from the civilian side and/or officers don't just start
11 traipsing through the middle of the crime scene?

12 A That was all done.

13 Q As a matter of fact, the first responders --
14 sorry -- the EMTs had already done what they needed to
15 do in the scene and Mr. O'Keefe had been transported to
16 the hospital, correct?

17 A That is correct.

18 Q So that was not a concern?

19 A No.

20 Q So nobody needed to be inside that scene that
21 wasn't authorized to be there?

22 A That's correct.

23 Q Civilian or officers?

24 A That's correct.

25 Q Who was it that told you specifically where

1 John O'Keefe's body was?

2 A I don't recall specifically. I had a
3 collaborative meeting with Sergeant Lank and Sergeant
4 Goode.

5 Q Were you aware at the time that you had the
6 meeting with Sergeant Lank that Sergeant Lank did not
7 ever see John O'Keefe's body in the position?

8 A Yes, I did. I don't believe Sergeant Goode
9 did, to my knowledge. I believe John O'Keefe may have
10 been in the ambulance at that time.

11 Q John O'Keefe -- I'm sorry. I got a little
12 confused. John O'Keefe may have been in the ambulance
13 at which time?

14 A When some of the officers arrived.

15 Q So if that were the case, then they wouldn't
16 have any personal knowledge of where John O'Keefe's
17 body was, either?

18 A Not to your precise locations, yes.

19 Q You mentioned a tent, and you said that you,
20 in answer to a question by Mr. Lally, you did not go
21 back to Canton P.D. to get the tent. You had a tent in
22 your trunk or something?

23 A That's correct.

24 Q Okay. When you interviewed with
25 Lieutenant Tully, did he specifically ask you -- this

1 was about a month ago -- about the tent?

2 A I don't recall.

3 Q Would it refresh your recollection if you were
4 to review just a small snippet of his report about your
5 interview?

6 A Yes.

7 MR. JACKSON: May I approach, Your Honor?

8 THE COURT: Yes.

9 BY MR. JACKSON:

10 Q Take a look at that. I direct your attention
11 to Paragraph 4. Tell me if you recognize that
12 document.

13 A I don't recognize the document. It's the
14 first time I've seen it.

15 Q Fair enough. Read the highlighted portion and
16 tell me whether that refreshes your recollection about
17 a conversation you had with Lieutenant Tully about the
18 tent.

19 A Okay. I --

20 THE COURT: Read it to yourself.

21 THE WITNESS: Yes. Okay.

22 BY MR. JACKSON:

23 Q You've read that?

24 A Yes.

25 MR. JACKSON: May I approach?

1 THE COURT: Yes.

2 BY MR. JACKSON:

3 Q Do you recall telling Lieutenant Tully --

4 THE COURT: You can ask him if that refreshes
5 his recollection.

6 BY MR. JACKSON:

7 Q Does that refresh your recollection at this
8 point?

9 A It doesn't change my recollection.

10 Q You said you didn't recollect exactly what you
11 told Lieutenant Tully about the tent. And I'm asking
12 does that refresh your recollection about what you told
13 Lieutenant Tully about the tent?

14 A That is not what I said about the tent.

15 Q Okay. So you didn't say, I drove to Canton
16 P.D. headquarters to retrieve a tent to protect the
17 area where O'Keefe was found from falling snow but
18 never used the tent due to high winds?

19 A We didn't have a tent at that time.

20 Q That wasn't my question. I'm being very
21 specific. Did you say that to Lieutenant Tully?

22 A No. That was misinterpreted.

23 Q Okay. So if he got that -- if that's in his
24 report, that's incorrect?

25 A It's not accurate. Correct.

1 Q Okay. Is there anything else that you read in
2 that report that's not accurate?

3 A You asked me to read the highlighted version.
4 That's what I read, and I didn't see anything. I
5 didn't read any other part of the document.

6 MR. JACKSON: If I may have just a moment,
7 Your Honor?

8 THE COURT: Yes.

9 BY MR. JACKSON:

10 Q You indicated, still staying at the crime
11 scene on January 29th, you indicated on direct
12 examination that the area adjacent to the bloodstains
13 that you saw and the drinking glass that you found,
14 that area was somewhat trampled by, you presume, the
15 first responders, the EMTs?

16 A That's correct.

17 Q You also indicated that you didn't see any
18 other signs of shoe prints going from the street to the
19 house, correct?

20 A From the scene to the house, correct.

21 Q From the scene to the house.

22 A Correct.

23 Q What do you mean when you say that, from the
24 scene to the house?

25 A So the house, you have the house, and the

1 scene was to the far left, actually on the property
2 line with No. 32. So I didn't see any footprints. The
3 only other footprints I saw was where the officers
4 walked around and put up the crime scene tape.

5 Q Meaning walking through the yard?

6 A Correct.

7 Q And putting up crime scene tape?

8 A Correct.

9 Q And, if somebody had -- how many of those sets
10 of prints did you see?

11 A I don't recall.

12 Q Did you photograph or seek to have anybody
13 else photograph the area from the scene to the house?

14 A Just those long shots that you saw in the
15 exhibits.

16 Q Okay. And the snow was actively falling at
17 the time, correct?

18 A It is, yes.

19 Q So if there had been a print a couple of hours
20 earlier, you very well might not see it?

21 A That is correct.

22 Q Okay. I'd like to ask you a couple of
23 questions about the collection of the blood. You found
24 what you thought was blood initially, right?

25 A That's correct.

1 Q Pink in color, reddish in color?

2 A Correct.

3 Q And you began the process of removing layers
4 of snow, in other words, dusting the area with a leaf
5 blower?

6 A That is correct.

7 Q Had you ever used a leaf blower in a crime
8 scene preservation effort?

9 A The first time.

10 Q The first time? And you indicated -- your
11 testimony was temporary evidence containers to collect
12 that blood, correct?

13 A Yes. We utilized cups, plastic cups.

14 Q Those were red Solo cups, right?

15 A That's correct.

16 Q The same kind of red Solo cup you'd drink beer
17 out of at a barbecue?

18 A Sure. You could.

19 MR. LALLY: Objection, Your Honor. Move to
20 strike.

21 THE COURT: I'll allow it.

22 BY MR. JACKSON:

23 Q There is nothing special about the red Solo
24 cup?

25 A Other than they are plastic, nothing special.

1 Q And where did you get those red Solo cups?

2 A We got them from Lieutenant Kelleher.

3 Q So in other words, you got, to use your words,
4 the evidence containers from a neighbor?

5 A Correct.

6 Q He had some Solo cups in his house?

7 A We asked him if he had any plastic containers,
8 any type of plastic container that we could utilize.

9 Q How far were you from Canton P.D.? From 34
10 Fairview to Canton P.D., give me an idea.

11 A A mile, mile and a half.

12 Q So even in really bad weather, four minutes,
13 five minutes, is that right, to drive?

14 A Sure.

15 Q You didn't go back to Canton P.D. to get
16 actual evidence containers, correct?

17 A We wouldn't have temporary plastic containers
18 that -- what we were looking for. We were looking to
19 take samples of snow. I know for a fact we did not
20 have those. We needed bags, needle containers, things
21 of that nature. We were all set. But, as far as
22 plastic containers that we wanted to utilize, we didn't
23 have them.

24 Q Did you have any glass containers?

25 A No.

1 Q So Canton P.D. does not have or utilize
2 evidence collection containers that are plastic?

3 A We have needle containers that are plastic.
4 We have blood swabs that are in plastic containers.
5 But for what we wanted to take a sample, we did not
6 have. So we improvised.

7 Q That's my next question, is certainly Canton
8 P.D. employs and owns sterile swabs?

9 A Correct.

10 Q A sterile swab is in a container that's long
11 and usually the swab is connected to the lid?

12 A Correct.

13 Q You pop it out and then it's sealed?

14 A That's correct.

15 Q And forensically stable, correct?

16 A Yes.

17 Q And the reason that it's sealed and
18 forensically stable is so nothing can contaminate the
19 sample, correct?

20 A Sure.

21 Q But, just as importantly, the blood sample
22 can't contaminate anything else?

23 A Correct.

24 Q Did you go to Canton P.D. a mile away and get
25 sterile swabs for the blood collection?

1 A The blood was frozen. We didn't think it
2 would be viable.

3 Q You didn't think it would be viable?

4 A Correct.

5 Q If you touched the swab to cold blood, do you
6 think you might get some blood on that swab?

7 A I wouldn't be sure it would be efficient for
8 testing.

9 Q So what you did instead was you gathered red
10 solo cups from a neighbor, unsterilized, and scooped up
11 the snow with what you thought the blood was and just
12 carried them back to the truck?

13 A No. We took six samples, individual samples.
14 Our philosophy was we'll let the crime lab extract it
15 the way they best see fit. Those six samples were
16 bagged and then transported back to Canton Police
17 Headquarters and placed into evidence.

18 Q Were they covered?

19 A No, not that I recall.

20 Q They weren't sealed in any way?

21 A No.

22 Q So if somebody sneezed over the top of one of
23 those cups?

24 A They were sealed in a bag, brown evidence bag
25 at that time. Nobody was going to sneeze over the cup.

1 Q Do you have a rough estimate of how many
2 people handled those red Solo cups before they were
3 used to collect blood evidence in this homicide case?

4 A Do you want me to estimate?

5 Q Give me an idea.

6 A Sure. Sergeant Lank --

7 Q No. I'm sorry. My question was a bad one.
8 Before you took possession of the red Solo cups, do you
9 have any idea how many people before you had handled
10 those Solo cups?

11 A I took them out of a package. So probably
12 none.

13 Q How about before they were packaged?

14 A I assume Solo doesn't sell contaminated cups.
15 I would say none.

16 Q So they're certainly not forensically stable?
17 They're not sterile?

18 A I don't know what definition you're looking
19 for, but I would agree.

20 Q Do you think it's standard practice for a
21 police department to borrow red Solo cups from a
22 neighbor to gather evidence?

23 MR. LALLY: Objection.

24 THE COURT: You can go ahead and answer that.

25 THE WITNESS: Of course not. Nothing about

1 the scene was standard.

2 BY MR. JACKSON:

3 Q Right. The glass shard -- I'll touch on the
4 Solo cups in just a second. But I want to talk about
5 the glass shard of the drinking glass.

6 Were you the one that found the drinking
7 glass?

8 A I was operating the leaf blower and uncovered
9 the glass, yes.

10 Q So you were the first one -- well, I guess you
11 couldn't tell me if you're the first one, but you
12 noticed it pretty quick?

13 A I wouldn't say it was quick, but we uncovered
14 it.

15 Q Okay. And then there is -- you mentioned a
16 CARS report in your direct examination. There was a
17 report done of where some of these items were found,
18 correct?

19 A You'll have to clarify. I'm not sure what you
20 mean.

21 Q Sure. Did you mention a CARS report, which is
22 a report of the crime scene, where things were located,
23 mapping of those things?

24 A You objected. It was sustained. I never got
25 to answer that question.

1 Q Touche.

2 MR. JACKSON: Your Honor, may I approach?

3 THE COURT: Yes.

4 MR. JACKSON: Thank you.

5 BY MR. JACKSON:

6 Q I'm just going to show you a document and see
7 if you recognize that.

8 A I don't recognize it. I couldn't tell you
9 what it is.

10 Q That's okay. If you don't recognize it,
11 that's all I needed.

12 MR. JACKSON: Your Honor, may I?

13 THE COURT: Yes.

14 BY MR. JACKSON:

15 Q Are you familiar generally -- I don't need to
16 necessarily talk about this one, but are you familiar
17 generally with CARS reports?

18 A Not at all.

19 Q Not at all? That's not sort of in your
20 framework?

21 A Not in my realm.

22 Q Okay. Are you aware that there is a process
23 by which items of evidence are mapped or they're
24 attempted to be mapped for a crime scene?

25 A I'm not -- I don't do homicide investigations.

1 I'm not aware of that.

2 Q Okay. Again, with regard to where the blood
3 drops were found -- let me go back to one other
4 question I had.

5 You said you took six samples, correct?

6 A That's correct.

7 Q Did you precisely indicate in any report or
8 note or diagram exactly which blood drops were in which
9 Solo cup?

10 A I did not.

11 Q As you were using that snow blower and you
12 uncovered the glass cup and more of the blood samples,
13 at any point did you see a Size 12 men's shoe, black in
14 color?

15 A No.

16 Q At any point, did you see a man's baseball
17 hat, black in color?

18 A No.

19 Q You actually dug out a portion of a -- you
20 didn't dig it out. You moved it with your foot or
21 somebody did, a portion of the berm or the curb that
22 separates the street from the yard, correct?

23 A That is correct.

24 Q At any point along that curb line, did you see
25 a men's shoe?

1 A Along the exposed curb line, no.

2 Q Did you see it anywhere else?

3 A No.

4 Q And you didn't see a hat anywhere else?

5 A No.

6 Q You didn't see any bright red taillight
7 material anywhere else?

8 A I did not.

9 Q You did not see any clear taillight material,
10 plastic material?

11 A I did not.

12 Q You did not see any black plastic material?

13 A No.

14 Q You certainly didn't see 45 pieces of plastic
15 material?

16 A I did not.

17 Q If you had found a broken glass, if you find a
18 broken glass in somebody's yard in a situation like
19 this, did that seem out of place to you?

20 A They were coming from a bar. It didn't seem
21 totally out of place, no.

22 Q At the time that you found the broken glass,
23 would you rationally think, well, maybe the rest of
24 this glass is inside the residence?

25 A No.

1 Q You did not think that?

2 A No. There was a reason that I didn't think
3 that.

4 Q Did you think that -- well, let me ask you
5 this: Did you ever go inside the house to search for
6 the other part of the glass?

7 A Absolutely not.

8 Q Because you made up your mind initially where
9 that glass came from?

10 MR. LALLY: Objection.

11 THE COURT: You can answer that, sir.

12 THE WITNESS: No.

13 BY MR. JACKSON:

14 Q Did you search the house for any other
15 matching glasses?

16 A No.

17 Q As a matter of fact, you didn't search the
18 house for any physical items, did you?

19 A Of course not.

20 Q Is that because that house belonged to a
21 Boston police officer?

22 A No. It's because it requires a probably
23 cause, as you know, which we did not have.

24 Q Or at least you didn't think you had at that
25 time?

1 A We knew we didn't have it.

2 Q Did you seek it from a judge?

3 A I'm familiar with what probable cause is.

4 Q Did you seek a probable cause warrant from a
5 judge?

6 A No, I did not.

7 Q Right. Did you ask for consent to search the
8 house?

9 A We wouldn't do consent in a death
10 investigation.

11 Q That wasn't my question. My question was --

12 A No, I did not.

13 Q Okay. Is that because you were at the house
14 of a Boston police officer?

15 A No. It's because we wouldn't do it because if
16 consent is denied, we still don't have probable cause
17 and we still couldn't search the house.

18 Q But you never asked, did you?

19 A Never asked.

20 Q According to your interview with
21 Lieutenant Tully, after going to the scene the first
22 time, you then returned back to Canton Police
23 Department, correct?

24 A Yes.

25 Q At that point, you remember having a

1 conversation with Chief Berkowitz, correct?

2 A That is correct.

3 Q And you indicated that having that
4 conversation with Chief Berkowitz, that was about the
5 Canton Police Department recusing themselves?

6 A Not doing any further investigating of
7 interviews, yes.

8 Q And you indicated actually in that
9 conversation that you agreed with Chief Berkowitz that
10 Canton should be recused, correct?

11 A He agreed with me.

12 Q It was your assessment that the recusal should
13 take place?

14 A Yes, it was.

15 Q And he agreed?

16 A That is correct.

17 Q And the reason for that recusal was because of
18 the relationship between the Albert family and the
19 Canton Police Department?

20 A No.

21 Q What was the reason for the recusal?

22 A The reason was we had a Boston police officer
23 on another Boston police officer's lawn, property, and
24 that property owner was the brother of somebody in our
25 investigative unit.

1 Q Okay. That's one way to put it. Another way
2 to put it would be because of the Albert family having
3 a relationship with the Canton Police Department?

4 A It has to do with Detective Albert having a
5 relationship with his family.

6 Q Right. Or the other side of that is his
7 family having a relationship with Canton Police
8 Department?

9 MR. LALLY: Objection, Your Honor.

10 THE COURT: Sustained. Go ahead and move on,
11 please.

12 BY MR. JACKSON:

13 Q What time was that conversation with
14 Chief Berkowitz?

15 A It was after 8:00 a.m. when we got back to the
16 police department.

17 Q You then traveled back to 34 Fairview to
18 interview the homeowners with Sergeant Lank?

19 A Sergeant Lank was doing the interviews, yes.
20 But I accompanied him.

21 Q Okay. Approximately what time did you arrive
22 back at 34 Fairview to engage these interviews?

23 A Approximately 9:00 o'clock.

24 Q Were you and Sergeant Lank the -- well, let me
25 ask you this: At that time, did you know whether

1 Sergeant Lank had already gone into the home?

2 A Yes, I did.

3 Q Okay. So you knew that you were not the first
4 person to go in and make contact with the individuals
5 inside the home. That was Sergeant Lank?

6 A Sergeant Lank and Sergeant Goode, correct.

7 Q Before you ever got there?

8 A Correct.

9 Q Okay. Did they show you any documentation,
10 notes or anything of that initial interview?

11 A No.

12 Q Do you know whether they took notes of that
13 initial interview?

14 A I don't.

15 Q Do you know whether they recorded that initial
16 interview?

17 A I know they did not.

18 Q You indicated that you, personally, knew
19 Brian Albert; is that right?

20 A I knew him since I became a police officer,
21 yes.

22 Q And so you indicated that you have a
23 professional relationship with him but not necessarily
24 a personal relationship with him?

25 A Correct.

1 Q Did you know that he was in the house before
2 you walked in the house?

3 A No, I did not.

4 Q What was your personal interaction -- sorry --
5 your professional interaction with Brian Albert before
6 you walked into that house that day?

7 A Previously?

8 Q Correct. Just in general.

9 A So in general, as a detective, he was with the
10 fugitive unit at one point. He was helpful when we had
11 a fugitive we needed to apprehend in Boston. Things of
12 that nature, job-related things.

13 Q Had you ever, for lack of a better phrase,
14 hung out with Brian Albert?

15 A Not a day.

16 Q You never socialized with him?

17 A No.

18 Q Okay

19 A Not intentionally. It's possible if I went to
20 a retirement party that he had been present, possibly,
21 but not that I'm aware.

22 Q But you had no social relationship with him?

23 A Zero.

24 Q You indicated that there were five or six
25 people inside the house, including Brian Albert and

1 Jennifer McCabe; is that right?

2 A Yes. That is correct.

3 Q So you clearly knew those two people?

4 A I didn't know Jen McCabe. I know that
5 Sergeant Lank was going to speak with her. But I
6 didn't know her personally. I never had a conversation
7 with her.

8 Q What was it about Jen McCabe that you recall
9 as opposed to the other four or five people that were
10 in the house?

11 A Sergeant Lank was talking to her.

12 Q You just remember that name?

13 A That's who he went to talk to.

14 Q Got it. So he went back specifically with the
15 intent of talking to Jennifer McCabe?

16 A That is correct.

17 Q And that's when you accompanied him.

18 A That is correct.

19 Q Was that interview recorded?

20 A No.

21 Q Did you take any notes about that interview?

22 A I did not.

23 Q Did you write a report about that interview?

24 A I did not.

25 Q You said that there were -- other than

1 Brian Albert and Jennifer McCabe, there were three or
2 four other people in the house?

3 A Yes.

4 Q Were those three or four other people in the
5 house at the time that John O'Keefe was found dead or
6 dying on the lawn?

7 A I don't have the answer to that.

8 Q Did you think that might have been an
9 important thing to find out?

10 A Again, I didn't think of that at that time and
11 I didn't think it was important at that time. I knew
12 that Sergeant Lank had already interviewed people in
13 the house.

14 Q You had a -- you knew at that time,
15 Lieutenant, was -- you had an officer, a Boston police
16 officer, who was either dead or dying on the front lawn
17 of a house with a bunch of occupants, and you didn't
18 think that it was necessary to investigate or interview
19 those occupants yourself?

20 A No, I did not. At that time, I wanted to not
21 participate in investigative interviews.

22 Q You did tell Lieutenant Tully in your
23 interview with them, you volunteered that Brian Higgins
24 was not present when you went back to the house,
25 correct?

1 A I didn't believe he was.

2 Q You didn't believe he was?

3 A No. I don't recall Brian Higgins being there.

4 Q Okay.

5 A I don't recall who the other people were at
6 that time.

7 Q But Brian Higgins was not one of them?

8 A I don't know the answer to that. He could
9 have been. I can't say with certainty.

10 Q You know Brian Higgins?

11 A I do.

12 Q Obviously, you know him well?

13 A I do.

14 Q As a matter of fact, you guys occupy sort of
15 the same space at Canton P.D., correct?

16 A That is correct.

17 Q You might see him most days out of the week?

18 A No, but I know him.

19 Q As a matter of f relationship with Brian
20 Higgins, as well?

21 A I have been social with Brian Higgins, yes.

22 Q So you know him professionally and socially.
23 You can't tell the jurors whether or not he was in that
24 home when you went back over there to interview
25 individuals about a Boston police officer who had

1 fallen and was either dead or dying on the front lawn?

2 MR. LALLY: Objection.

3 THE COURT: Go ahead and answer that, sir.

4 THE WITNESS: I can't answer that question. I
5 had no conversation with Brian Higgins. So I don't
6 recall.

7 BY MR. JACKSON:

8 Q You do know that on January 29th -- well, let
9 me ask you this foundationally. Did you go back after
10 that series of unrecorded interviews? Did you go back
11 to Canton Police Department and work the rest of the
12 day?

13 A Yes.

14 Q Brian Higgins was also at the station for
15 nearly the entire day?

16 A Again, I don't recall that.

17 Q Are you aware that Brian Higgins has a -- had
18 been granted a keycard for the station?

19 A Yes.

20 Q I'm guessing that is a relative rare thing if
21 you're not a Canton police officer to have a keycard
22 and full access to the station?

23 A There were a couple ATF agents that had that
24 access, yes.

25 Q Okay. But he was one of them?

1 A He was one of them, yes.

2 Q Is that access restricted, Lieutenant? In
3 other words, does his keycard work the same as your
4 keycard?

5 A I don't know the answer to that.

6 Q He would have -- to your knowledge, he roamed
7 throughout the station at will, correct?

8 A I don't know how he roamed. He was a very
9 private person. You very rarely see him. Usually his
10 habits were he'd go to a front stairwell, right to his
11 office.

12 Q But his access -- I guess I'm struggling with
13 the question. His access was not limited to your
14 knowledge?

15 A I don't know the answer to that. I can't
16 answer that to my knowledge.

17 Q He could go into any door he wanted to?

18 A I would doubt it.

19 Q You would doubt that it would be limited?

20 A I would doubt he'd have unlimited access. The
21 patrolmen don't have full access. It all depends by
22 your grade. Where he's an outside agency, I'm sure he
23 had limited access.

24 Q Who has access to the sally port?

25 A The doors, whoever is in the dispatch area,

1 the overhead doors, there is one pedestrian door that
2 everybody would have access to.

3 Q So he would have access to that, as well?

4 A Yes.

5 Q Where is Chief Berkowitz's office in relation
6 to the rest of Canton Police Department, the physical
7 building?

8 A The best way to describe it -- I don't know if
9 the jury is familiar with the building. But, if you
10 were looking from Washington Street dead on, it's the
11 top floor, far left office.

12 Q I don't know this. I'm not being -- this is
13 not rhetorical. Is it three floors or two floors?

14 A So it's really three floors, but it's numbered
15 1, 1A and 2.

16 Q So he would be on two? Three physical floors
17 up?

18 A Correct.

19 Q Got it. Thank you.

20 When you had the meeting that you earlier
21 described with Chief Berkowitz where you indicated
22 Canton P.D. needed to recuse itself, was that in the
23 office or someplace else?

24 A That was in the office of the detective
25 sergeant.

1 Q Which is where?

2 A It's on Floor 1A.

3 THE COURT: All right. We are going to take a
4 five, 10-minute break.

5 (Whereupon, the jury was escorted from the
6 courtroom for a brief recess.)

7 THE COURT: I'll see counsel at sidebar.

8 (Whereupon, there was a sidebar conference as
9 follows:)

10 Court Order: Jurors or Juror Issues
11
12
13

14 MR. JACKSON: I appreciate that.

15 THE COURT: So it takes about 10 minutes
16 because they've got to go through another courtroom
17 to do that. So you all have 10 minutes.

18 MR. JACKSON: Thank you, Your Honor.

19 MR. LALLY: Thank you.

20 (Court resumes at 11:58 a.m.)

21 (Defendant present. Jury present.)

22 THE COURT: Okay. Whenever you're ready,
23 Mr. Jackson.

24 MR. JACKSON: Thank you, Your Honor.

25 BY MR. JACKSON:

1 Q You had started to tell us who at the scene,
2 who handled those Solo cups. Can you describe that for
3 us?

4 A I handled them to the scene. Sergeant Lank
5 collected the samples.

6 Q Under your supervision?

7 A Yes.

8 Q Did anybody other than Sergeant Lank handle
9 those Solo cups?

10 A No.

11 Q So once they were in his possession, they
12 remained in this possession until they were booked into
13 evidence?

14 A They were bagged, placed in Sergeant Lank's
15 vehicle. He transported them to Canton Police
16 Headquarters, transported it into the office and logged
17 them in as evidence. Yes.

18 Q Did you watch all that happen?

19 A I did not.

20 Q You did not. So you're presuming those next
21 steps after he was out of your vehicle?

22 A I know that because he told me so.

23 MR. JACKSON: Well, that's hearsay. Move to
24 strike, Your Honor.

25 THE COURT: All right. I'll strike the end of

1 that.

2 MR. JACKSON: Thank you.

3 BY MR. JACKSON:

4 Q Not what he told you. What you observed.

5 A I did not observe him place it in evidence.

6 Yes.

7 Q At what point did you lose sight of those Solo
8 cups?

9 A When I got in my vehicle to leave the scene.

10 Q So once the Solo cups were in his -- you saw
11 them go in the brown paper bag?

12 A That's correct.

13 Q The evidence bag. Then you saw him go in the
14 truck?

15 A That's correct.

16 Q And, at that point, you don't have any
17 personal information about what happened to those Solo
18 cups, personal observations?

19 A Until I removed them from temporary evidence,
20 I have no recollection.

21 Q Okay. I am going to ask you a couple of
22 questions about once you were inside the home. You've
23 already indicated that you did not seek a search
24 warrant and you did not seek consent to search the
25 home, correct?

1 A That's correct.

2 Q Did you look around the house for any sign of
3 a struggle or a fight?

4 A No.

5 Q Did you go to the basement at all?

6 A No.

7 Q Had you ever been in the house before that
8 morning at 9:00 a.m.?

9 A Never.

10 Q I'm sorry?

11 A Never.

12 Q Okay. Did you go to the backyard?

13 A No.

14 Q Did you personally observe whether or not that
15 house has a bulkhead door that services the basement?

16 A I have no idea.

17 Q Did you photograph any portion of the house?

18 A The front of the house.

19 Q Sorry. Bad question. Good point.

20 Inside the house, did you photograph any part
21 of the house?

22 A No.

23 Q Did you have a cell phone with you?

24 A Yes.

25 Q It has a camera on it?

1 A Yes.

2 Q So you could have photographed it; you chose
3 not to?

4 A I would have needed permission or a warrant.

5 Q And you got neither?

6 A That's correct.

7 Q You sought neither?

8 A That's correct.

9 Q Did you photograph any of the individuals in
10 the home, for instance, for injuries or anything like
11 that?

12 A No.

13 Q Did you or Sergeant Lank separate the
14 witnesses before they were interviewed?

15 A There was only one witness he was
16 interviewing.

17 Q Who was that?

18 A Jen McCabe.

19 Q Where was everybody else in the house?

20 A I believe they were all in the same area. The
21 kitchen. I believe it was the kitchen.

22 Q Those individuals were not taken to a
23 different part of the house?

24 A Not that I'm aware, no.

25 Q And they were allowed to communicate with and

1 among one another?

2 A Sure. Yes.

3 Q And I think you already answered this, but I'm
4 going to ask it just to make sure I'm clear.

5 That interview of Jen McCabe was not recorded
6 in any way, audio or video recorded?

7 A Correct.

8 Q How long were you inside the house for that
9 interview?

10 A Ten minutes, maybe.

11 Q Other than Jen McCabe being interviewed, were
12 any of the other witnesses inside that house asked any
13 questions by Sergeant Lank or by you?

14 A No, not that I believe so. Not that I recall.

15 Q Were you the person on February 1st who gave
16 access to the Massachusetts State Police to the sally
17 port?

18 A I was probably one of them. The sally port
19 doors can only be opened by dispatch.

20 Q Did you approve or authorize those doors to be
21 opened for purposes of Massachusetts State Police
22 coming in and processing that vehicle?

23 A I don't know if I specifically did it at that
24 point, but I certainly would, yes.

25 Q You knew that the vehicle had been in that

1 sally port since January 29th in the afternoon,
2 correct?

3 A I don't believe at what point I knew it was in
4 the sally port, but I did know it was there for days
5 before, yes.

6 Q Okay. And, if it had been there from January
7 29th to February 1st, that's three full days?

8 A That's correct.

9 Q From the time that that SUV arrived and was
10 situated in the sally port, how many people had access
11 to that truck, to that SUV?

12 A How many people had access or access to the
13 sally port? Is that one, or are you asking --

14 Q It's one and the same.

15 A I would says the entire department.

16 Q Dozens?

17 A Yes. Correct.

18 Q Hundreds?

19 A No. We were very small.

20 Q Okay. I don't know that.

21 A So we're probably 45.

22 Q Forty-five. And just about every one of those
23 45 people would have access to that sally port and that
24 SUV had they wanted to?

25 A Had they wanted to, yes.

1 Q And that 45 doesn't include Brian Higgins?

2 A It probably doesn't, but he would have access,
3 as well.

4 Q Thank you. Those same individuals that would
5 have access to the SUV inside the sally port very
6 obviously would also have access to anything else that
7 had been placed in the sally port, along with the SUV,
8 correct?

9 A That is correct.

10 Q Did you photograph or cause to be photographed
11 that SUV immediately upon its arrival into the sally
12 port on January 29th?

13 A I wasn't working. No.

14 Q Did anybody to your knowledge seek to
15 photograph the condition of that vehicle immediately
16 when it arrived at the sally port?

17 A I wasn't there. I can't say.

18 Q You've certainly never seen any photographs
19 from January 29th immediately when that SUV was brought
20 into the sally port, right?

21 A Other than our evidence, I haven't seen any
22 evidence in this case.

23 Q You indicated that Massachusetts State Police
24 was having some difficulty removing the light. We saw
25 a short snippet of the video, correct?

1 A Yes. That is correct.

2 Q Who made the decision to even remove the
3 taillight? Was that Canton P.D. or was that
4 Massachusetts State Police?

5 A That would have been somebody within the state
6 police.

7 Q Okay. And then you contacted Officer Wanless
8 to actually facilitate the removal of that light,
9 right?

10 A I contacted dispatch to ask Officer Wanless to
11 return.

12 Q And you knew at the time that Officer Wanless
13 was a sworn Canton police officer?

14 A That's correct.

15 Q But, Lieutenant Gallagher, you told us just a
16 few minutes ago that you and the chief, actually you
17 and then the chief agreed, that the Canton Police
18 Department was completely recused from this case and
19 the investigation based on a conflict of interest,
20 correct?

21 A No You're spinning it. What I said was from
22 participating in investigative interviews.

23 Q So they could take part, Canton Police
24 Department could take part, in any other part of the
25 investigation, according to you, with the exception of

1 investigative interviews?

2 A We can open doors. We can facilitate things.
3 Yes.

4 Q Remove taillights?

5 A Yeah. If it's an assist, round peg, round
6 hole, absolutely, yes.

7 Q So in other words, the Canton Police
8 Department notwithstanding the conflict of interest,
9 was still allowed to participate in the investigation
10 of the Karen Read matter?

11 A There was no conflict of interest. I said
12 appearance of conflict of interest. So we have to be
13 careful. I didn't believe there was a conflict. I
14 honestly believed we could have investigated this case.
15 I said the appearance of such a conflict.

16 Q You also didn't believe that there was
17 probable cause to search the house, either?

18 A I know that --

19 MR. LALLY: Objection.

20 THE COURT: That answer will -- it's stricken,
21 and so is the question.

22 BY MR. JACKSON:

23 Q So Canton Police Department was, in fact, at
24 your authority given permission to manipulate that
25 light in terms of pulling it out of the SUV, correct?

1 MR. LALLY: Objection.

2 THE COURT: Sustained.

3 BY MR. JACKSON:

4 Q Canton Police Department was allowed to
5 facilitate the removal of that light?

6 A Yes.

7 Q And, during the course of the removal of that
8 light, a taillight was broken, correct?

9 A That's correct.

10 Q And shattered?

11 A Yes.

12 Q There were parts of it that were falling onto
13 the ground?

14 A I don't think there was anything falling onto
15 the ground at that point.

16 Q So now we do have evidence that that taillight
17 in some way, shape, form or fashion was broken or
18 broken more once it was inside the sally port in Canton
19 Police Department's custody?

20 A You're going to have to rephrase that. I
21 don't understand the "broken more" part.

22 Q During the removal process, that light was
23 broken even more?

24 A No.

25 MR. LALLY: May I approach, Your Honor?

1 THE COURT: Yes.

2 BY MR. LALLY:

3 Q Just take a look at that photograph and tell
4 me if you recognize it.

5 A I don't recognize the photograph. It's the
6 first time I've seen it.

7 Q Do you recognize what's depicted in the
8 photograph?

9 A It's a broken taillight.

10 Q Does that appear to be the taillight that was
11 removed during the process that we saw on the video
12 just a few minutes ago on direct examination?

13 A I can only assume it is. I never examined the
14 light.

15 THE COURT: So you can't assume. So can you
16 answer the question, Lieutenant?

17 THE WITNESS: No.

18 BY MR. JACKSON:

19 Q You don't recognize it?

20 A No.

21 Q Okay. And were you -- I didn't see you on the
22 video, but it was a fairly dark video. Were you there?

23 A Yes. I'm in the gray shirt.

24 Q Okay. Were you there as Officer Wanless was
25 actually removing the taillight from the vehicle?

1 A I'm not sure. I'd have to watch the video
2 again.

3 Q Okay. Do you recall if pieces and parts were
4 being broken off and shattered while he was removing
5 it?

6 A Not at all.

7 MR. LALLY: May I approach?

8 THE COURT: Yes.

9 BY MR. JACKSON:

10 Q Were you the person who actually recovered --
11 I think you did answer this. You were not the person
12 who knelt down and actually recovered the blood
13 droplets?

14 A Correct.

15 Q That was Sergeant Lank?

16 A That's correct.

17 Q When you gave the -- sorry. Let me rephrase
18 that.

19 Was it you or Sergeant Lank that put the Solo
20 cups into the evidence bag?

21 A Sergeant Lank.

22 Q Was that in your presence?

23 A Yes.

24 Q Okay. How long after he put the Solo cups in
25 the evidence bag did he put the evidence bag in his

1 truck?

2 A Seconds. Less than a minute.

3 Q And then how long did the truck sit there
4 until he left or you left and you were no longer able
5 to observe?

6 A He left immediately.

7 Q You were at the location of the sally port on
8 February 3rd. You've already testified to that,
9 correct?

10 A No. I testified February 1st.

11 Q I'm sorry. My mistake. February 1st.
12 You also indicated that at your direction,
13 Sergeant Lank booked the Solo cups into the evidence
14 locker?

15 A That's procedure. Yes.

16 Q Right. I understand it's procedure. I'm
17 asking if he actually did.

18 A Yes.

19 Q Okay. Did you see a log of that?

20 A Excuse me?

21 Q Did you see a log of that?

22 A I saw the police report.

23 Q Which police report?

24 A The original call.

25 Q Okay. And, in that police report, he

1 indicates that he took the Solo cups back to Canton
2 Police Department and booked them into evidence, right?

3 A It was given a property number and assigned to
4 temporary evidence.

5 Q And, when something is given a property
6 number, is there an officer working that property area
7 to assign the property numbers?

8 A No. The officer placing the property evidence
9 assigns the property number himself.

10 Q I see. So that officer would assign a
11 property number and physically place that into
12 temporary -- what's it called again?

13 A Temporary evidence until the evidence officer
14 takes custody of it.

15 Q Okay. Did an evidence officer actually take
16 custody of these items?

17 A No, because it was being transferred to the
18 state police. So it wasn't going into our permanent
19 evidence locker.

20 Q So where did those cups sit for the three days
21 between January 28th and February 1st?

22 A In the refrigeration unit in temporary
23 evidence.

24 Q And is there a log to sign in and sign out to
25 make sure the chain of custody of items like this are

1 maintained?

2 A The evidence officer keeps that log. Yes.

3 Q Is there any log, Lieutenant Gallagher, of
4 these items being booked into the temporary evidence
5 locker?

6 A There should be, but I don't know for a fact.
7 But there should be, yes.

8 Q I agree that there should be. I am asking you
9 if there is.

10 A I don't know the answer to that.

11 Q The fact of the matter is, there is no law,
12 document or report ever showing these items were ever
13 booked into the temporary evidence locker at Canton
14 P.D.; isn't that right?

15 A I don't believe that's accurate.

16 Q Do you have that evidence log?

17 A I don't. I don't have access to the evidence
18 log.

19 Q Could you get access to the evidence log?

20 A No.

21 Q You're a supervisor at Canton P.D.

22 A That's correct.

23 Q Why would you not have access to the evidence
24 log?

25 A I think only two or three people have access

1 to evidence.

2 Q Who would they be?

3 A The evidence officer.

4 Q Which is who?

5 A Paul DiGiampietro, sergeant.

6 Q Can you spell that for us, please?

7 A D-I-G-I-A-M-P-I-E-T-R-O.

8 Q Who else?

9 A I'm not sure, to be honest. I'm assuming the
10 chief of police.

11 Q Chief Berkowitz, I assume?

12 A Most likely, but I don't know.

13 Q Deputy chief?

14 A Possibly, yes.

15 Q Head of detectives?

16 A No.

17 Q Any other lieutenants or supervisors?

18 A I don't believe so. I know I don't have
19 access as a lieutenant.

20 Q If there is no evidence log of an item being
21 booked into evidence, that's a pretty good indicator
22 that it actually never made it into the evidence log --
23 evidence locker, correct?

24 MR. LALLY: Objection.

25 THE COURT: Sustained.

1 BY MR. JACKSON:

2 Q We do know that wherever it went, the blood
3 items and the glass went back to Canton P.D., correct?

4 A That's correct.

5 MR. JACKSON: May I have just a moment, Your
6 Honor?

7 THE COURT: Yes.

8 MR. JACKSON: May I approach briefly?

9 THE COURT: Yes.

10 MR. JACKSON: Thank you.

11 BY MR. JACKSON:

12 Q Lieutenant, I am going to ask you kindly to
13 take a look at those four photographs. And then once
14 you've had a chance to review them, just look up at me
15 and I'll ask you a couple of questions.

16 THE COURT: Did you see them?

17 MR. LALLY: I don't know what was just handed
18 to the witness.

19 THE COURT: Why don't you go take a look.

20 (Whereupon, Mr. Lally views the photographs.)

21 MR. JACKSON: May I approach briefly?

22 THE COURT: Yes.

23 BY MR. JACKSON:

24 Q Take your time.

25 A I'm all set.

1 Q Do you recognize those photos or what's
2 depicted in those photos?

3 A Yes

4 Q Do you recognize the time frame those photos
5 would have been taken?

6 A Yes.

7 Q Based on the context?

8 A Yes.

9 Q February 1st, correct?

10 A I have no idea if it was February the 1st.
11 But it would be between the 29th of January and
12 February 1st.

13 Q Fair enough.

14 MR. JACKSON: Your Honor, may I publish?

15 THE COURT: Okay. Have they been introduced?

16 MR. JACKSON: They have not yet been
17 introduced, Your Honor. I'm sorry. Protocol-wise,
18 I missed that step. I need to ask that these be
19 marked next in order, four photographs.

20 THE COURT: Okay. Any objection?

21 MR. LALLY: No, Your Honor.

22 (Whereupon, four photographs were entered and
23 marked Exhibits No. 37 through and including 40 in
24 Evidence.)

25 THE COURT REPORTER: Exhibits 37 through 40.

1 MR. JACKSON: Thank you.

2 BY MR. JACKSON:

3 Q Take a look at what's --

4 THE COURT: Hold on. Hold on. They are still
5 being marked, and the court reporter has to record
6 everything you say.

7 BY MR. JACKSON:

8 Q With the Court's permission, Lieutenant, I'm
9 going to try and go in the same order. So you might
10 want to glance at this photograph. It may be a better
11 visual for you.

12 A Okay.

13 Q I'd like to ask you if you recognize what's
14 depicted in this photograph, especially the area right
15 down here on the right, bottom right. Do you see that
16 white rag?

17 A I do.

18 Q Lieutenant, would you take a close look at
19 that rag? I'm going to ask you to identify it on the
20 photograph. Do you see a couple of dark marks on what
21 appear to be that --

22 A I see it on that screen.

23 Q It's a better visual up there. Okay. Fair
24 enough.

25 What is the position of that rag as it relates

1 to the vehicle in the photograph?

2 A It's the rear passenger side.

3 Q Right rear quarter panel, correct?

4 A Yes.

5 Q And is that, in fact, the SUV in question?

6 A I believe it is.

7 Q Okay. The SUV that belonged to Ms. Read?

8 A I believe it is, yes.

9 Q Let's take a look at the -- excuse me.

10 MR. JACKSON: Your Honor, for the record, we
11 were just speaking about Item 37.

12 THE COURT: Okay.

13 BY MR. JACKSON:

14 Q Looking at 38, does that appear to be the same
15 rag in the photograph?

16 A It does, yes.

17 Q Okay. Do you see a shadow sort of looming
18 over the top of the photograph?

19 A I do.

20 Q Given what you just said about Evidence Item
21 37, does that appear to be the shadow of the right rear
22 quarter panel of the truck?

23 A I would guess it's the tailgate.

24 THE COURT: Sir, you can't guess.

25 THE WITNESS: I would say it was the tailgate.

1 The tailgate's up. Maybe the tailgate is up at
2 this point.

3 BY MR. JACKSON:

4 Q Do you see the bag in the middle of the
5 photograph?

6 A Yes.

7 Q Can you read what's on that bag?

8 A Stop & Shop.

9 Q That does not look like an evidence bag, does
10 it, sir?

11 A No.

12 Q As a matter of fact, it looks like a grocery
13 bag?

14 A Correct.

15 Q Is that right?

16 A Yes.

17 Q So not a forensically stable item, correct?

18 A Correct.

19 Q Certainly not sterile?

20 A Correct.

21 Q Right?

22 A Correct.

23 Q Do you know where that bag came from?

24 A I do not.

25 Q Is that a bag that you supplied to

1 Sergeant Lank?

2 A I do not know.

3 Q Do you know where Sergeant Lank got the
4 Stop & Shop bag?

5 A I do not know.

6 Q Do you know where Sergeant Lank got the
7 Stop & Shop bag?

8 A I do not know.

9 Q Next photograph, please.

10 Taking a look at what's been marked as
11 evidence item 39, do you recognize what's in the middle
12 of the photograph?

13 A Yes.

14 Q What is that?

15 A Those are the plastic cups with the coagulated
16 blood.

17 Q Do you see on the top of the photograph the
18 same rag?

19 A I do.

20 Q With the same markings?

21 A Yes.

22 Q Does it appear that those unsealed cups with
23 liquid blood in them are situated right near the right
24 rear quarter panel of the SUV in this photograph?

25 A They are to the rear of the vehicle. Yes.

1 Q So this appears to be evidence item 40. Do
2 you see the same white rag?

3 A Yes.

4 Q And you see the same evidence bag -- I'm sorry
5 -- Stop & Shop bag, correct?

6 A Correct.

7 Q And it's filled with six Solo cups?

8 A Correct.

9 Q With what appears to be liquid blood?

10 A Correct.

11 Q Does that photograph appear to be taken at or
12 about the same place, near the right rear quarter panel
13 of the SUV?

14 A It's actually -- I would say that the mat is
15 the mat to the entrance to the booking area. So that
16 is probably a couple of feet behind the vehicle.

17 Q Okay. Let's go back to Evidence Item No. 37,
18 which was the first photograph. Do you see the rag in
19 that photograph?

20 A Yes, I do.

21 Q Let's go to the next item. Now, do you see
22 the mat -- I'm sorry. I should note this for the
23 record. We are now looking at 38. Do you see the mat
24 and the rag in the photograph?

25 A Yes, I do.

1 Q And you see a tire on that mat?

2 A Yes.

3 Q That's a golfcart of some sort that belongs to
4 the Canton Police Department?

5 A It's a Kubota. Yes.

6 Q A Kubota. Thank you. It looks like the rag
7 is in the same spot?

8 A Yes.

9 Q All right. So the blood inside the
10 Stop & Shop bag is sitting right next to the right rear
11 quarter panel of that truck, correct?

12 A You can see the rear tire. It's probably at
13 least three feet from the rear. If you'll look at the
14 top -- I can use the marker here. This appears to me
15 to be the rear tire, which would put this a couple of
16 feet behind the vehicle.

17 Q Understood.

18 MR. JACKSON: That's all I have. You can do
19 the lights.

20 BY MR. JACKSON:

21 Q Would you agree that having unsealed and
22 unsecured blood next to the right rear portion of the
23 SUV is a recipe for cross-contamination?

24 A If I can speak to this incident alone?

25 Q That's a yes-or-no question. Do you think --

1 A It's not yes or no. But, for your purposes, I
2 would say yes.

3 Q And, in fact, it could even be worse, for
4 instance, not just inadvertent cross-contamination. If
5 somebody wanted to touch something on that bag, on
6 those cups, and then touch the vehicle, they could
7 easily do that with that juxtaposition of the open
8 blood next to the back, the rear of the car?

9 MR. LALLY: Objection.

10 THE COURT: Sustained.

11 BY MR. JACKSON:

12 Q Lieutenant, if somebody was so inclined, that
13 situation could provide an opportunity for evidence
14 tampering, couldn't it?

15 MR. LALLY: Objection.

16 THE COURT: Sustained.

17 MR. JACKSON: May I have a moment, Your Honor?

18 THE COURT: Yes.

19 MR. JACKSON: I have nothing further at this
20 time, Your Honor.

21 THE COURT: Mr. Lally?

22 MR. LALLY: Yes. Just briefly, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. LALLY:

25 Q Lieutenant, if I could ask you, a phrase that

1 was posed to you a couple of times during cross-
2 examination as far as recusal of your department, how
3 would you define that term in this specific sense?

4 A In this specific case?

5 Q Yes.

6 A We did not want to go on any investigative
7 interviews because one of our best investigators, his
8 name is Kevin Albert, is the property owner's brother.
9 And we didn't think it would be appropriate if we were
10 on those interviews, questioning his family members.

11 Q Now, with regard to death investigations,
12 specifically unattended death investigations, what, if
13 any, role does your department specifically have when
14 it comes to those or what if any jurisdiction does your
15 department have versus the state police?

16 A The state police takes jurisdiction. They run
17 the investigation. We assist them in any way we can.

18 Q Now, sir, you were asked some questions in
19 regard to -- or you indicated that in regard to the
20 drinking glass that you located in the area where
21 Mr. O'Keefe's body was that it didn't come from the
22 house. Why is that?

23 A I think I said I believed we didn't think it
24 came from the house at that time because they were out
25 at the Waterfall Bar & Grille the night before. And

1 the initial statements from Sergeant Lank and
2 Sergeant Goode obtained, nobody put John O'Keefe
3 anywhere but where he was found. And that included his
4 girlfriend.

5 Q Now, if I could take a step back just to the
6 state police jurisdiction over unattended deaths.
7 What, if any, assets does the state police have as far
8 as investigative assets that your department doesn't?

9 A They have far superior tools to investigate.
10 They have direct access to the crime lab. They have a
11 CARS team that can do accident reconstruction.

12 Q Now, with regard to the criminalist and
13 turning your attention to February 1st of 2022 when
14 you're in the sally port area, you mentioned that
15 Officer Wanless came in with a toolkit to assist in
16 removing a taillight, correct?

17 A That's correct.

18 Q And is it your understanding, essentially, he
19 just removed a clip from the back of the taillight in
20 order to take it out of the vehicle?

21 A Yes. I believe you can see on the video it
22 just pops into the criminalist's hands.

23 Q And, as far as your review of that video or
24 your observations that day, there was nothing about the
25 taillight that was broken during that removal process,

1 correct?

2 A Correct.

3 Q Now, as far as cross-contamination that you
4 were asked about, you indicated it was not a yes-or-no
5 answer. What, if anything, else would you have to add?

6 A What counsel was depicting was the transfer of
7 custody over to the state police. So the criminologist
8 was handling it at that time. The photographer was
9 photoing it. The criminologist was transferring the
10 blood into their plastic containers. And that's why
11 I'm sure it was being handled by a criminologist.
12 There wasn't going to be any cross-contamination. I
13 wasn't concerned about cross-contamination.

14 Q So that was a scenario that you were
15 describing earlier in your direct examination as far as
16 your turning those items physically over to the
17 criminalist on February 1st in the sally port area?

18 A And converting them to their plastic
19 containers, yes.

20 MR. LALLY: Thank you, sir. Nothing further.

21 THE COURT: Mr. Jackson?

22 MR. JACKSON: Very briefly.

23 RECROSS-EXAMINATION

24 BY MR. JACKSON:

25 Q You said that no one put John O'Keefe, none of

1 the witnesses put John O'Keefe, anywhere but where he
2 was found. That's what you just said, correct?

3 A That's correct.

4 Q So your investigative technique is just to ask
5 a witness how did that body get there. And, if they
6 say, I have no idea, your job is just done, right?

7 MR. LALLY: Objection.

8 THE COURT: Sustained.

9 BY MR. JACKSON:

10 Q If a witness says, we found him here, do you
11 just take the witness at their word?

12 MR. LALLY: Objection.

13 THE COURT: You can go ahead and answer.

14 THE WITNESS: No. Of course not.

15 BY MR. JACKSON:

16 Q You might want to investigate a little
17 further, right?

18 A Absolutely.

19 Q And ask them questions?

20 A That is correct.

21 Q Get search warrants?

22 A When there is probably cause, we do.

23 Absolutely.

24 Q None of that was done here, though?

25 A No probable cause.

1 MR. JACKSON: Thanks. That's all I have.

2 THE COURT: You are all set, Lieutenant.

3 THE WITNESS: Thank you.

4 (Whereupon, the witness was excused.)

5 THE COURT: Who is your next witness,
6 Mr. Lally?

7 MR. LALLY: Your Honor, the Commonwealth would
8 call Sergeant Sean Goode to the stand.

9 THE COURT: Okay. And, while the sergeant is
10 coming in, I'll see counsel about scheduling.
11 (Whereupon, there was a sidebar conference as
12 follows:)

13 THE COURT: All right. So we were off on how
14 long things might take this morning. Does it make
15 sense -- so is Lank your next witness?

16 MR. LALLY: Yes.

17 THE COURT: How long do you expect this
18 witness?

19 MR. LALLY: It could be equal.

20 THE COURT: Does it make sense maybe to after
21 lunch -- so this witness will go past lunch?

22 MR. LALLY: I think so, yes.

23 MR. YANNETTI: There is no doubt --

24 THE COURT: And your cross?

25 MR. YANNETTI: It's probably about the length

1 of Mr. Jackson's, I would say.

2 THE COURT: All right. So maybe we send the
3 jury home early and do the voir dire of Lank when
4 we finish with this witness.

5 MR. YANNETTI: Okay.

6 THE COURT: I mean, do you have a short
7 witness in between?

8 MR. YANNETTI: In between? No. But I think
9 Lieutenant Ray, I think, is relatively quick.

10 THE COURT: All right. Let's see what time it
11 gets to be. But I'd like to do that voir dire
12 today and have Lank on tomorrow, rather than --

13 MR. LALLY: Sure. Okay. That makes sense.

14 THE COURT: Do a quick voir dire about it.
15 Okay. Thank you.

16 (Whereupon, the sidebar conference concluded.)

17 THE COURT: Jurors, I apologize for that.

18 It's actually going to streamline things for you.

19 Whereupon,

20 SEAN GOODE

21 having been first duly sworn, was examined and
22 testified under oath as follows:

23 THE COURT: Whenever you're ready, Mr. Lally.

24 MR. LALLY: Thank you, Your Honor.

25 DIRECT EXAMINATION

1 BY MR. LALLY:

2 Q Good afternoon, sir.

3 A Good afternoon.

4 Q Could you please state your name and spell
5 your last name for the jurors?

6 A It's Sean Goode, G-O-O-D-E.

7 Q And how are you employed, sir?

8 A The Canton Police Department.

9 Q And how long have you been a member of the
10 Canton Police?

11 A Seventeen years.

12 Q And what rank or assignment do you currently
13 have with the Canton Police?

14 A Midnight sergeant and two day patrol/traffic.

15 Q Now, how long have you held the rank of
16 sergeant with the Canton Police?

17 A Right about three years.

18 Q Now, with reference to your rank and
19 assignment as sergeant with sort of the overnight shift
20 -- and when does that run from?

21 A So it's midnight to eight. The oncoming
22 sergeant usually comes in around 11:00 o'clock at
23 night.

24 Q And, in general terms, if you could describe
25 for the jury what sort of are your duties and

1 responsibilities as a sergeant on the overnight shift?

2 A So I'm in charge of the patrolman. They work
3 under me. There's four of us on midnight, plus myself.
4 So five total; four on the road and one inside.

5 Q Turning your attention to the evening of
6 January 28, 2022, into the morning of January 29th,
7 2022, were you working on that occasion?

8 A Yes, I was.

9 Q Okay. In a similar capacity as you've just
10 described?

11 A Yes.

12 Q And so the time as far as when you arrived at
13 the Canton Police Station would be similar to what
14 you've just described, as well?

15 A Yes.

16 Q Now, when you arrive, if you recall, who was
17 sort of working with you or under you on that
18 particular shift?

19 A So that evening's midnight shift there's
20 myself, Officer Pascarelli, Officer Mullaney, Officer
21 Saraf and Officer Dever.

22 Q And, as far -- in addition to -- let me ask it
23 this way: So when you're performing those duties in
24 the Canton Police Station, where are you sort of
25 physically situated within the Canton Police

1 Department?

2 A We are inside the dispatch room. That's where
3 you handle all the calls, 911 calls, business lines,
4 stuff like that. So anybody that walks in the lobby,
5 they're right there.

6 Q And so would that also be sort of part of your
7 duties and responsibilities in regard to being the
8 supervising sergeant for the shift?

9 A That evening, yes. I was inside.

10 Q Now, with reference to 911 calls and dispatch,
11 what, if any, training have you received in regard to
12 those areas?

13 A Everybody in the Canton Police Department, we
14 do not have civilian dispatchers like other larger
15 departments. So every officer that works patrol has to
16 be certified on the PSAP station, which is the 911
17 dispatch console. And then, once you're certified,
18 you're able to answer all the 911 calls.

19 Q And what, generally speaking, does that
20 certification process entail?

21 A It's learning the software, learning how to
22 know the difference between a cell phone and a land
23 line, being able to look up when the 911 call comes in
24 on a cell phone.

25 We have three different monitors, and you'll

1 see that one of the monitors will be a map, and all of
2 a sudden, it will just ping and you'll see that cell
3 phone. And a lot of times, because of the location of
4 the town of Canton, we do get state police 911 calls
5 that are on the highway. So you have to be able to
6 differentiate which call it is; is it actually us or is
7 it state police, is it Randolph. Stuff like that. So
8 you have to be able to read a map. It's not very hard.

9 Q Beyond that, now, when people are calling in
10 to 911, they're typically calling in regard to an
11 emergency, correct?

12 A Yes.

13 Q So what, if any, training do you receive in
14 that certification process in regard to sort of
15 demeanor or how to handle people on a call?

16 A Obviously, if someone is calling in an
17 emergency, they probably are going to be nervous. You
18 want to just try to stay as calm as possible and try to
19 relate to them, not make them any more upset than they
20 already are and try to get the first thing out of their
21 -- is location, where are they.

22 Q Now, with respect to calls that come in to
23 911, what, if any, difference as far as directing a
24 call is there between something that's sort of a
25 medical call versus a law enforcement police-type call?

1 A So any call that comes in through 911, you
2 determine if it's police, fire or medical. If it's
3 police, obviously, we would handle it. But if it's
4 fire or medical, we send it to Holbrook, which is the
5 regional dispatch for Canton Fire. So it's literally
6 just click the button and it says "fire" right on the
7 screen. That call automatically gets connected to a
8 regional dispatcher in Holbrook, who then determines
9 what they need, whether it be ambulance, fire, stuff
10 like that.

11 Q Now, with reference to this particular shift
12 on this particular day, January 28th, into the 29th, at
13 some point during your shift, what, if anything, did
14 you observe about sort of the weather outside?

15 A When we came in, it was just very light
16 flurries. There was nothing sticking to the ground or
17 anything like that. We were all pretty prepared. We
18 knew that there was a storm coming at some point during
19 the night.

20 Q And, through your work with the Canton Police
21 Department, are you familiar with an individual by the
22 name of Brian Higgins?

23 A Yes.

24 Q And what, if any, relationship does he have
25 with -- what, if anything, does he do for work, if you

1 know?

2 A He works for the Alcohol, Tobacco and
3 Firearms. It's a federal agency.

4 Q And what, if any relationship, does he have
5 with your department at the Canton Police Station?

6 A He has a satellite office in our department.
7 He has his own scan card. He doesn't have to check in
8 with myself or anybody. But he works at our station.

9 Q And is he the only agent, federal agent with
10 the ATF, that has space or anything at your police
11 station?

12 A No. I believe there's actually U.S. Customs,
13 two of them, other agents that work at the station, as
14 well.

15 Q And do they have sort of similar relationships
16 as far as --

17 A They have access to the police department,
18 you know, Agent Higgins has worked on certain calls and
19 helped us out, whether it be a firearm case, stuff like
20 that.

21 Q Now, on that evening of the 28th and
22 specifically in the early morning of January 29th,
23 what, if anything, do you recall as far as seeing
24 Brian Higgins around the Canton Police Station?

25 A I remember at one point during the evening, he

1 came in. I don't remember if he came in through
2 dispatch or if I just saw him on one of the numerous
3 monitors we have in dispatch. I can't leave that room
4 because I'm the only one in the building on midnight.
5 But we never talked or anything like that. I didn't
6 think anything of it. It's not uncommon.

7 Q And do you recall around what time that
8 occurred?

9 A I believe it was probably 1:30. Again, I
10 wasn't looking at a clock to see.

11 Q Now, with respect to the parking lot area of
12 the Canton Police Station, when it comes to any sort of
13 substantial amount of snow, what, if anything, do you
14 do with regard to the vehicles in the parking lot in
15 reference to that kind of weather?

16 A We try to move all the cars that we're not
17 using. So that would be, on the midnight shift, it's
18 any of our unmarked detectives' cars, any of the patrol
19 vehicles that aren't being used. We try to help out
20 the DPW, which is the department of public works, as
21 best as possible when they try to plow our station
22 because, if not, all it ends up being is just one trail
23 through the parking lot and it's kind of a nightmare.

24 So with the help of the other patrolmen, if we
25 can get all the keys -- sometimes they're not easily

1 located, we try to move the cars to the outer edge of
2 the parking lot so that DPW can make a good pass, and
3 then we'll move them back over.

4 Q Now, with regard to the vehicles in the
5 parking lot, beyond sort of personal vehicles and the
6 marked units belonging to the Canton Police, with
7 regard to some of those other agents like Mr. Higgins
8 that you talked about, what, if any, vehicles would
9 they have within that parking area, as well?

10 A He had federal cars there that he used on
11 cases, and I believe he had two. They'd be, I guess,
12 his cruisers. They were Dodge pickups.

13 Q And then, with regard to those vehicles in
14 regard to snow removal, what, if anything, was
15 typically done with regard to that?

16 A They were parked at the outer edge. So we
17 don't have access to them. At least I didn't have
18 access to them.

19 Q Now, working that sort of 911 dispatch area
20 desk, at some point just before 5:00 a.m., what, if
21 any, calls did you receive around that time?

22 A I received a phone call from a women generally
23 asking if we had locked up or transported a male party
24 that evening. It's not uncommon that people call and
25 say, hey, did you lock up so and so or did you stop

1 anybody. She said some version of that he was out with
2 friends. He didn't come home tonight, and his
3 girlfriend is worried about him.

4 Q Now, at the time that you received that call,
5 did you know who that person was on the other end?

6 A No.

7 Q And fair to say at some point later, you had
8 responded to Fairview Road; is that correct?

9 A Yes.

10 Q And the person who had called just before
11 5:00 a.m., did you have occasion to speak with them
12 when you were on scene on Fairview?

13 A I did.

14 Q And who did you identify that first call to
15 come in from?

16 A The first call was Ms. Roberts.

17 Q And that would be Kerry Roberts; is that
18 correct?

19 A Yes.

20 MR. LALLY: Your Honor, may I approach?

21 THE COURT: Yes.

22 BY MR. LALLY:

23 Q Sir, I'm showing you this. Do you recognize
24 that?

25 A Yes.

1 Q What do you recognize that to be?

2 A That would be the 911 call from our station.

3 Q And that would be the call from Ms. Roberts;
4 is that correct?

5 A Yes.

6 MR. LALLY: Your Honor, the Commonwealth seeks
7 to introduce and admit as the next exhibit.

8 MR. YANNETTI: No objection.

9 THE COURT REPORTER: This will be Exhibit 35.
10 (Whereupon, CD of 911 call was entered and marked
11 Exhibit No. 35 in Evidence.)

12 MR. LALLY: Your Honor, with the Court's
13 permission, I would ask to publish that call to the
14 jury at this point.

15 THE COURT: Okay. Hold on one second, please.

16 All right. Go ahead.

17 MR. LALLY: Ms. Gilman, please.

18 (Whereupon, the 911 call is played.)

19 BY MR. LALLY:

20 Q Now, Sergeant Goode, what was played in there,
21 is that a fair and accurate portrayal of the 911 call
22 that you had with Kerry Roberts around 5:00 a.m.?

23 A Yes.

24 Q Now, turning your attention to about an hour
25 forward at approximately 6:00 a.m. on the 29th, what,

1 if any, other phone calls did you receive in regard to
2 the same sort of --

3 A At 6:04 a.m. on the 911 dispatch console, I
4 received a call from a woman at 34 Fairview.

5 Q Now, in those intervening sort of hours, as
6 you were stating on the 911 call, no one sort of
7 physically came into the Canton Police Station and
8 reported anything in regard to this, correct?

9 A No.

10 Q Okay. And, again the party that you spoke to
11 on the phone at approximately 6:04 a.m., did you know
12 that person at that time?

13 A No.

14 Q And, again, you responded later on or shortly
15 thereafter to Fairview and spoke with a number of
16 different people, correct?

17 A Correct.

18 Q And, from those conversations on scene, do
19 you now know who placed that 911 call at approximately
20 6:04 a.m.?

21 A Yes.

22 Q And who was that person, sir?

23 A That would be Ms. McCabe.

24 Q And that would be Jennifer McCabe; is that
25 correct?

1 A Yes.

2 Q Okay. Now, with regard to you talked about
3 the weather when you first arrived to your shift,
4 around 6:00 a.m., what, if anything, had changed
5 between the weather when you arrived and around
6 6:00 a.m.?

7 A It was snowing heavily.

8 MR. LALLY: Your Honor, may I approach again?

9 THE COURT: Yes.

10 BY MR. LALLY:

11 Q Showing you another disk, do you recognize
12 that?

13 A Yes.

14 Q And what do you recognize that to be?

15 A That's the 911 call from Ms. McCabe.

16 Q Thank you.

17 MR. LALLY: The Commonwealth seeks to
18 introduce and admit as the next exhibit.

19 MR. YANNETTI: No objection.

20 THE COURT REPORTER: That will be Exhibit 36.

21 (Whereupon, CD of 911 call was entered and marked
22 Exhibit No. 36 in Evidence.)

23 MR. LALLY: Again, Your Honor, with the
24 Court's permission, I would ask to publish Exhibit
25 36 to the jury now, as well.

1 THE COURT: Okay.

2 (Whereupon, the 911 call is played.)

3 MR. LALLY: Ms. Gilman, if you could just
4 pause that just briefly? I'm sorry.

5 (Whereupon, the 911 call is paused.)

6 MR. LALLY: If I could ask you just to back
7 that up about 10 or 15 seconds or so once the siren
8 outside calms down.

9 (Whereupon, the video is played.)

10 MR. LALLY: Thank you, Ms. Gilman.

11 BY MR. LALLY:

12 Q And so upon receiving that 911 call just after
13 approximately 6:04 a.m., what, if anything, did you do
14 with regard to dispatching to the scene?

15 A So once it was connected to Holbrook, I ended
16 up dispatching my own officers, my downtown cruisers,
17 to 34 Fairview. And then I had one other cruiser come
18 back to the station so I could get down there.

19 Q And so you, yourself, responded down there; is
20 that correct?

21 A Yes.

22 Q And about how much time elapsed from the time
23 that you sort of transferred to Holbrook from the
24 medical situation to the time that you traveled now to
25 Fairview Road?

1 A I would guess it would have to be less than
2 five minutes.

3 Q And, in addition to the patrol cars and
4 yourself, who, if anyone else, did you notify in
5 relation to that call when you received it?

6 A So I phoned Lieutenant Gallagher and
7 Detective Sergeant Lank.

8 Q Why?

9 A Just policy. The seriousness of the call.
10 Lieutenant Gallagher was the off-going lieutenant the
11 night prior, the shift prior. So that's what we
12 usually do. And Detective Sergeant Lank is in charge
13 of the detectives.

14 Q Now, when you left Canton Police Station to
15 respond to Fairview, who, if anyone, assumed your role
16 as far as manning the dispatch area and the 911?

17 A That would be Officer Dever.

18 MR. LALLY: Your Honor, may I approach?

19 THE COURT: Yes.

20 BY MR. LALLY:

21 Q For Madam Court Reporter, could you just spell
22 Officer Dever's last name?

23 A Yes. It's going to be D-E-V-E-R.

24 Q I'm going to show you what's been previously
25 marked as Exhibit 14. Do you recognize that, sir?

1 A Yes, I do.

2 Q And what do you recognize that to be?

3 A That would be our roll call log or press log.

4 Q And, as far as that particular log is
5 concerned, is there any indication on there who sort of
6 created that log?

7 A Yes. That would be Officer Dever.

8 Q And these are logs that you typically create
9 when you're working that particular position as far as
10 the dispatch desk, correct?

11 A Yes. It's pretty much a running journal for
12 our department.

13 Q And sort of how is that information gleaned
14 and how is that sort of transmitted into that log?

15 A It's as accurate as the officer that actually
16 enters the information. So if it was busy in there and
17 she's by herself, you're taking information down.
18 You're writing it. Then you have to physically enter
19 it into a computer. So there would be a delay in time.

20 Q Thank you, sir.

21 MR. LALLY: May I approach just to retrieve,
22 Your Honor?

23 THE COURT: Yes.

24 BY MR. LALLY:

25 Q Now, Sergeant Goode, with respect to your

1 response from the Canton Police Station to 34 Fairview
2 Road, what was sort of the path of travel that you
3 took?

4 A So I pulled out of the police station at 1492
5 Washington Street, taking a right onto Washington,
6 heading south.

7 Q And then where did you go from there?

8 A Then I took a right onto Chapman Street. And
9 then it would be your third right on Fairview.

10 Q And, coming down Fairview, what, if anything,
11 did you notice as far as sort of the elevation of the
12 roadway as you come from the Chapman side down to where
13 34 is?

14 A Coming from Chapman, you're heading downhill.
15 It's the end of Fairview that meets Cedarcrest.

16 Q And so where is 34 in relation to sort of
17 Cedarcrest?

18 A It's the second house on the left before you
19 reach the intersection of Cedarcrest at Fairview.

20 Q And, as you're approaching or as you're en
21 route between the police department and Fairview Road,
22 what, if anything, did you observe as the road
23 condition, visibility, things like that?

24 A It was terrible. Heavy snow, wind.
25 Visibility was awful.

1 Q And, when you arrive on scene, what is sort of
2 the first thing that you observe upon your arrival?

3 A As I was coming down the hill, visibility was
4 pretty bad. I noticed the Canton Fire engine. The
5 ambulance was already on the scene. Both of my two
6 officers' cruisers were also on the scene.

7 Q Now, as far as the particular cruiser that you
8 were in on that day, is there sort of a particular
9 cruiser that is reserved for sort of the sergeant or
10 lieutenant who is in charge of the --

11 A Yes. So 682 is the primary patrol supervisor
12 vehicle.

13 Q And that would sort of shift from shift to
14 shift as far as whoever that particular sergeant is?

15 A Yeah. You'd take the same one. 682 is the --
16 it's labeled on the side of the doors "Patrol
17 Supervisor."

18 Q And so is that vehicle or is that the cruiser
19 that you took to go from the police station to Fairview
20 that morning?

21 A Yes, I did.

22 Q And with regard to that cruiser and sort of
23 other cruisers within the Canton Police Department,
24 what, if any, recording system is available on those
25 cruisers?

1 A All marked units have a -- it's called a
2 WatchGuard camera system. It has a front video camera,
3 and then it also has in the prisoner/passenger back
4 seat, it has a camera there, as well. They should be
5 working audio in the back seat. They are activated by
6 if you flip the lights on, the blue lights, it will
7 automatically click. You don't have to press "record."
8 The cruiser automatically starts recording. If you got
9 in a car accident, the camera would start recording.
10 Any kind of impact, the camera starts recording. It
11 actually ends up being passively recording even when
12 it's not on.

13 Q You talked a little bit about the audio as far
14 as in the back of the cruiser. But, as far as from the
15 camera in the front of the cruiser, where is the audio
16 recording in regard to that, if at all?

17 A It would be on the mic. There is a mic stand
18 that sits in a charger. It looks like almost a beeper.

19 Q And so that's located inside the cruiser,
20 correct?

21 A Yes.

22 MR. LALLY: May I approach the witness, Your
23 Honor?

24 THE COURT: Yes.

25 BY MR. LALLY:

1 Q Sir, I'm showing you a flash drive. Do you
2 recognize that?

3 A Yes.

4 Q And what do you recognize that to be?

5 A That is the flash drive for the Canton Cruiser
6 682.

7 MR. LALLY: Your Honor, the Commonwealth seeks
8 to introduce and admit as the next exhibit.

9 (Whereupon, flash drive from cruiser video was
10 entered and marked Exhibit No. 41 in Evidence.)

11 THE COURT REPORTER: Exhibit 41.

12 THE COURT: Why don't we break now for lunch.

13 MR. LALLY: Thank you, Your Honor.

14 (Whereupon, the jury is escorted from the courtroom
15 for the luncheon recess.)

16 THE COURT: So, Mr. Lally, you have
17 Lieutenant Rae here in case we can get to him?

18 MR. LALLY: Yes, Your Honor. And just with
19 reference, I do have a number of other witnesses
20 who I anticipate having this afternoon. Am I free
21 to release anybody who is not Lieutenant Rae or
22 Sergeant Lank?

23 THE COURT: So I think we'll have those two.
24 You can step down, sir.

25 So we will finish with Sergeant Goode, and

1 then you've got Lieutenant Rae?

2 MR. LALLY: Yes.

3 THE COURT: And that will probably get us
4 to --

5 MR. LALLY: Oh, I think it will get us
6 sufficiently through the day. Obviously, I don't
7 want to release anybody unless the Court is in
8 agreement.

9 MR. YANNETTI: I really don't think we are
10 going to get to anyone else.

11 THE COURT: Okay. And then we will do the
12 voir dire. All right. So you can go ahead and
13 release the civilian witnesses.

14 MR. LALLY: Okay. Thank you.

15 (Whereupon, the luncheon recess is taken.)
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A F T E R N O O N S E S S I O N

(Court resumes at 2:04 p.m.)

(Defendant present. Jury present.)

THE COURT: Sergeant Goode, please.

THE CLERK: Sir, I remind you that you're still under oath.

THE WITNESS: Thank you, sir.

THE COURT: All right, Mr. Lally. Whenever you're ready.

MR. LALLY: Thank you, Your Honor.

BY MR. LALLY:

Q So, Sergeant, resuming with what has just been marked as Exhibit 41, that is the cruiser camera video from your Cruiser 682 that you were driving that day; is that correct?

A Yes.

MR. LALLY: Ms. Gilman, if you could -- and with the Court's permission, I'd like to publish some of that to the jury?

THE COURT: Okay.

MR. LALLY: Ms. Gilman, if you could start from the beginning through about four minutes and 30 seconds or so.

(Whereupon, the video is played.)

MR. LALLY: Ms. Gilman, can you pause it for

1 just one second?

2 (Whereupon, the video is paused.)

3 BY MR. LALLY:

4 Q Sergeant, if you could, as the video is
5 playing along, if you could just alert the jury to the
6 portion of the video where you observed yourself sort
7 of pulling onto Fairview Road?

8 A Yes.

9 MR. LALLY: And, Ms. Gilman, if you could,
10 when the sergeant does that, if you could just
11 pause it at that point. Thank you.

12 (Whereupon, the video is played.)

13 THE WITNESS: All right. We are coming up to
14 Fairview right now. That's Spring. The next one.
15 That's Fairview right there on the right.

16 MR. LALLY: If could pause it right there,
17 Ms. Gilman.

18 (Whereupon, the video is paused.)

19 BY MR. LALLY:

20 Q Sergeant Goode, if I could take you back just
21 to the right that you took just before that, what
22 street are you on right now?

23 A That's Chapman Street.

24 Q Okay. And was that Washington Street that you
25 had turned to get onto Chapman?

1 A Correct.

2 Q Can I ask you, when you're turning from
3 Washington Street onto Chapman, are there any sort of
4 businesses or sort of landmarks on your right or your
5 left as you're making that turn?

6 A So on the right-hand side as you're turning
7 onto Chapman, that's going to be Cassies Corner Store.
8 And on the left at the intersection, it used to be
9 called Temple Beth Abraham. I believe it's Temple B'na
10 Tikvah. Something. I don't know the actual name.

11 Q So there is a temple on your left and Cassies
12 on your right?

13 A Correct.

14 Q Okay. And so at this point in the video here
15 is about when you're about to turn onto Fairview,
16 correct?

17 A Yes.

18 MR. LALLY: Ms. Gilman, if you could?

19 (Whereupon, the video is played.)

20 MR. LALLY: Ms. Gilman, if you could pause it
21 right there?

22 (Whereupon, the video is paused.)

23 MR. LALLY: May I approach the witness, Your
24 Honor?

25 THE COURT: Yes.

1 BY MR. LALLY:

2 Q So, Sergeant, there is a laser pointer here.
3 Just click on this button and point it at the screen.

4 If I could, Sergeant, just ask you to within
5 this sort of still frame up here on the screen, do you
6 recognize the people that are depicted within this
7 still frame of this video?

8 A Yes.

9 Q And, to whatever extent, if you recognize
10 people, using the laser pointer draw the jury's
11 attention to whom you recognize.

12 A All right. That's going to be myself. Right
13 there is going to be Firefighter McLaughlin. That's
14 going to be Ms. Read. And in another second, I believe
15 that's going to be Ms. McCabe or, if not, Ms. Roberts.

16 Q Thank you, sir.

17 MR. LALLY: Ms. Gilman, if you could?

18 (Whereupon, the video is played.)

19 MR. LALLY: Ms. Gilman -- yes.

20 (Whereupon, the video is paused.)

21 Q The gentleman you see sort of behind you in
22 the frame, Sergeant, do you recognize who that is?

23 A Yes. That's Officer Saraf.

24 Q Thank you.

25 MR. LALLY: My apologies, Ms. Gilman. You can

1 run it again.

2 (Whereupon, the video is played.)

3 MR. LALLY: You can take that down,

4 Ms. Gilman. Thank you very much.

5 BY MR. LALLY:

6 Q And so, Sergeant, you arrive on scene in that
7 area. First of all, what's contained in that video, is
8 that a fair and accurate portrayal of what you observed
9 as far as the weather conditions outside that day?

10 A Yes.

11 Q And, when you arrive on scene, who, if anyone,
12 is it that you speak to first?

13 Q Initially, I walked up to Officer Saraf. I
14 said some variation of "what's going on." Officer
15 O'Keefe was already in the ambulance. And then I just
16 began to try to talk to anybody and everybody.

17 Q And so the ambulance is still on scene when
18 you arrive; is that correct?

19 A Yes.

20 Q But Officer O'Keefe is in the back of the
21 ambulance; is that correct?

22 A Yes.

23 Q Okay. And, at some point when you're speaking
24 with Officer Saraf, does he direct your attention to
25 where Officer O'Keefe was prior to being placed in the

1 ambulance?

2 A Yes.

3 Q And where did he direct your attention to?

4 A If you are looking at the house, it would be
5 the left-hand side, slightly like right in front of the
6 flagpole.

7 Q And about how far off the roadway would you
8 estimate that was?

9 A I would say eight to 10 feet off the curb.

10 Q Now, as far as speaking with other people,
11 without reference to necessarily what was said to you,
12 following your conversation with Officer Saraf, who, if
13 anyone, did you speak to next?

14 A I believe the first person I could really get
15 a statement from was Ms. McCabe.

16 Q And, when you say "first person you could
17 really get a statement from," what do you mean by that?

18 A It was a chaotic scene. People were just kind
19 of walking in and out. And so Ms. McCabe was the first
20 one that was able to give a good statement of how they
21 ended up here.

22 Q And, following your conversation with
23 Ms. McCabe, who, if anyone, did you speak to next?

24 A Next was Ms. Read.

25 Q And, just to be clear, when we speak about

1 Ms. Read, do you see her in the courtroom today?

2 A I do.

3 Q Could you just identify as to where she is
4 seated or an article of clothing she's wearing?

5 A She's sitting between Mr. Jackson and
6 Mr. Yannetti.

7 MR. LALLY: Your Honor, I'd just ask that the
8 record reflect the identification of the defendant
9 by the witness.

10 THE COURT: Okay.

11 BY MR. LALLY:

12 Q Now, when you're on scene and you're speaking
13 to these individuals, what, if any, impact did the
14 weather have as far as your ability to sort of hear
15 things that weren't direct conversations you were
16 involved with?

17 A You couldn't hear. It was oddly, eerily
18 quiet. But the wind was so howling that I have a tough
19 time actually hearing people. So you had to speak very
20 loud or get next to each other.

21 Q And, as far as your conversation with the
22 defendant, Ms. Read, what, if anything, did you ask her
23 and what, if any, response did she give you?

24 A So I walked Ms. Read to the back of 682. She
25 was obviously cold. I got her in the back of the car,

1 put the heat on, asked her how did she end up there,
2 how did her boyfriend end up here. She said, I don't
3 know.

4 Q Prior to placing her in the back of the
5 cruiser, how would you describe her sort of demeanor
6 outside?

7 A Confused, hysterical, shock.

8 Q What, if anything, was she saying or asking in
9 regard to Mr. O'Keefe prior to you putting her in the
10 back of the cruiser?

11 A She was yelling out, is he dead.

12 Q And is that something she said once, more than
13 once or something else?

14 A Numerous times.

15 Q And about how loudly was she saying that?

16 A Oh, she was yelling it.

17 Q And so once back in the cruiser, you asked her
18 some questions after she said, I don't know. What, if
19 anything, else did you ask her at that point?

20 A I asked her if she had driven there. And she
21 said, I think so. And then right after that, she said,
22 I don't remember. Because of her state, I decided to
23 stop questioning there. She couldn't keep her train of
24 thought.

25 Q Now, you had notified Detective Sergeant Lank

1 and Lieutenant Gallagher prior to your going to the
2 scene; is that correct?

3 A Yes.

4 Q And about what time was it that either or both
5 of them arrived on the scene?

6 A Detective Sergeant Lank probably got there at
7 about 6:20, 6:25. I immediately brief him on what we
8 had, what was going on so far.

9 Q And about what time did Lieutenant Gallagher
10 arrive?

11 A I believe Lieutenant Gallagher probably came
12 in right around 7:00 a.m.

13 Q Now, following your conversation with the
14 defendant, who, if anyone, else did you speak to on
15 scene?

16 A I spoke to the other party, Ms. Roberts.

17 Q If you know, about how long a period of
18 conversation are we talking about with respect to
19 Ms. McCabe and Ms. Roberts?

20 A Each interview?

21 Q Yes.

22 A A couple minutes.

23 Q And why was it only a couple minutes?

24 A It was a pretty quick statement. It seemed
25 like they were only in the car for a very short amount

1 of time.

2 MR. YANNETTI: Objection. Move to strike.

3 THE COURT: All right. We will strike after
4 "it was a pretty quick statement." Next question.

5 MR. LALLY: Sure.

6 BY MR. LALLY:

7 Q Now, with regard to the defendant, Ms. Read,
8 after you had that brief conversation with her in the
9 back of your cruiser, where did she go from there?

10 A I believe she -- at some point, we let her
11 back outside of the car. We never closed the door on
12 her because I stood in the doorframe with my head in
13 the back seat. She got out. She kind of just did her
14 own thing, paced up and back between talking to either
15 Ms. Roberts or Ms. McCabe, yelling out.

16 Q And, at some point, did the ambulance that
17 Officer O'Keefe was in, did that leave the scene?

18 A It did.

19 Q And, following that, what, if anything, did
20 you say or do with reference to the defendant,
21 Ms. Read?

22 A Once Officer O'Keefe was transported, Ms. Read
23 just was not listening to any directions. We were
24 trying to keep her in Ms. Roberts' car to stay warm.
25 She was going back and forth. I finally told

1 Ms. Roberts we had everybody's information. She's not
2 needed anymore. Go home. Get warm. We'll reach out
3 if we have to.

4 Q And shortly after -- and, at that point, did
5 Ms. Roberts take Ms. Read?

6 A She did.

7 Q And what, if anything, happened next on scene
8 with regard to Ms. Read?

9 A It was moments later I got a radio
10 transmission from our officer working dispatch that
11 Mr. Robinson, her father, was on the phone with
12 Ms. Read, and she was making suicidal threats to take
13 her own life.

14 Q And, based on that information that you
15 received, what, if anything, did you do in regard to
16 that?

17 A Well, once -- Officer Deven, who didn't even
18 know that we had Ms. Read at the scene, she radioed to
19 us to confirm did we have a Karen party on scene. I
20 said we did. She explained that her father was frantic
21 on the phone, and Ms. Read was stating that she wanted
22 to end her life. And he, of course, said he wanted her
23 to be in protective custody.

24 So at that time, I knew that we'd be able to
25 get a hold of her because I had all the information. I

1 believe I just called Ms. Roberts' phone and told her
2 to bring her back to the scene.

3 Q And about how long was it after you spoke to
4 Ms. Roberts that they returned to the scene?

5 A They couldn't have gone very far, especially
6 with the road conditions.

7 Q And then, based on those statements that were
8 reported to you from the dispatch from the defendant's
9 father, what, if anything, did you do with regard to
10 Ms. Read at that point?

11 A I told Officer Mullaney, who was on scene --
12 most of our patrolmen have it's called Section 12
13 paperwork inside of all of our cruisers just for that
14 reason. I advised him to fill out the proper
15 paperwork, and we were going to section Ms. Read to the
16 hospital for mental evaluation.

17 Q And what is a Section 12 from your
18 perspective?

19 A It is a tool for police officers when you come
20 on scene with someone who's having either a mental
21 breakdown, claiming that they want to hurt themselves.
22 Anything like that. We have the power as police
23 officers to fill out the proper paperwork. We're not
24 medical professionals. Let a doctor determine if she
25 does need medical help.

1 And so -- and, if she doesn't want to go, that
2 paperwork allows us to actually physically put her on a
3 stretcher and send her to the hospital. Once she gets
4 to the hospital, it is up to the doctors there to do
5 their due diligence. And, if they deem that she's not
6 mentally unstable, then she's released. But at least
7 it's off of us.

8 Q Now, the time that Ms. Read returns to the
9 scene, the fire department, being the ambulance and the
10 engine, have already left; is that correct?

11 A Yes. Correct.

12 Q And then at some point do apparatus from the
13 fire department come back in reference to the Section
14 12?

15 A Correct. So I believe this group was from
16 Station 2, which is the other fire station in the town
17 of Canton. They arrived on scene.

18 Q And, during that time in between, who arrives
19 first? The fire department or Ms. Roberts with
20 Ms. Read?

21 A Ms. Roberts.

22 Q And, during that time after Ms. Roberts
23 arrives with Ms. Read and prior to the fire department
24 arriving, what, if any, interaction did you have with
25 Ms. Read during that time?

1 A None.

2 Q And then, once the fire department returns on
3 scene, what, if anything, do you direct them to with
4 regard to Ms. Read and regard to the paperwork that you
5 had Officer Mullaney fill out?

6 A Officer Mullaney and Officer Saraf and it
7 looks like in the video escort Ms. Read to the
8 ambulance. And she is safely transported to the
9 hospital. Our officer back at dispatch called back
10 Mr. Read and advised him that his daughter was safe.

11 Q Turning back to the scene, following Detective
12 Sergeant Lank's arrival, what, if any -- where, if
13 anywhere, did you and Detective Sergeant Lank go on
14 scene following that?

15 A So we were waiting for the fire truck to
16 arrive. We noticed that the lights went on at 34
17 Fairview. We needed obviously to speak to the
18 homeowners. I told Sergeant Lank at the time -- I
19 believe he was on the phone with CPAC for the state
20 police. I said, the lights just went on on the front
21 door. Let's go speak to the homeowners. And we both
22 walked in.

23 Q You actually physically walked into the house;
24 is that correct?

25 A Yes.

1 Q Now, with respect to prior to you seeing sort
2 of the house lights go on at 34 Fairview, had you seen
3 anybody go into or out of that residence while you were
4 there?

5 A Yes. At some point, either myself or
6 Sergeant Lank told Ms. McCabe that she needs to wake up
7 the homeowners; we need to speak to them.

8 Q And why did you say that specifically to
9 Ms. McCabe?

10 A We have no idea why John O'Keefe is laying on
11 a front lawn of a house. We have no -- the statements
12 from the three people -- we need to figure out what
13 happened last night, that night.

14 Q And so I guess my question is more why
15 Ms. McCabe versus somebody else?

16 A Ms. McCabe is the sister-in-law of the
17 homeowner. So she would be a friendly face to knock on
18 the door at 6:00 o'clock in the morning in a blizzard.

19 Q Now, beyond anybody at 34 Fairview Road,
20 again, before you observe those lights go on in the
21 residence, from the other houses sort of on the street,
22 up and down, who, if anyone, did you observe come out
23 of any of those houses?

24 A Nobody.

25 Q And was that something that continued

1 throughout the time that you were on scene?

2 A Correct.

3 Q So how long were you on scene for in total?

4 A Looking at the log, we were there for almost
5 exactly two hours.

6 Q And so during those two hours, no one from any
7 of the houses on the street came outside?

8 A No. I mean, every emergency truck that showed
9 up at 6:00 o'clock in the morning during a blizzard,
10 there's no other cars on the road. So you're not
11 coming down with the sirens blaring, waking up an
12 entire street, a neighborhood. There is no need for
13 it. So it was just lights flashing. And, to be honest
14 with you, you couldn't see very far.

15 Q So you and Detective Sergeant Lank go into the
16 home at 34 Fairview. And who, if anyone, did you speak
17 to in there?

18 A Mr. Albert, Mrs. Albert, Brian and Nicole.

19 Q And who, if anyone else, was present in the
20 home when you spoke with them?

21 A When I was in there, I know Jen was in there,
22 but we didn't speak to her because we already spoke to
23 her. But we just spoke to Brian and Nicole right in
24 the front room.

25 Q Now, you heard over the course of the 911 call

1 from Ms. McCabe that she references the 34 Fairview as
2 the Albert residence, correct?

3 A Yes.

4 Q And did you know Brian Albert or were you
5 aware of who he was prior to going to the house that
6 day?

7 A I know of Brian Albert, yes.

8 Q And how did you know him?

9 A He's a brother of a co-worker that I've
10 worked with for 18 years.

11 Q And the co-worker that you worked with for 18
12 years, who was that?

13 A Detective Albert.

14 Q And what's his first name?

15 A Kevin.

16 Q And had you ever been to that house before?

17 A No.

18 Q Have you ever been inside that house before?

19 A No.

20 Q And, when you go inside that day, it's
21 Brian Albert, Nicole Albert and Ms. McCabe; is that
22 correct?

23 A Yes.

24 Q And, during the time that you were in there,
25 do you recall seeing -- or who, if anyone else, do you

1 recall seeing in there besides those three people,
2 yourself and Detective Sergeant Lank?

3 A Nobody. Detective Lank took the lead on
4 speaking to Brian and Nicole Albert. And I kind of
5 just moseyed in the front of the house, looked in the
6 dining room, you know, and listened to what they said
7 what happened. They seemed like -- they were genuinely
8 in shock that there was a --

9 MR. YANNETTI: Objection.

10 THE COURT: Sustained. Next question, please.

11 BY MR. LALLY:

12 Q What, if anything, did you observe about their
13 demeanor when you spoke to them? Brian and Nicole.

14 A They looked like they just got woken up at
15 6:00 o'clock in the morning.

16 Q And, as far as -- you indicated that you're
17 sort of looking or poking around the front area near
18 the front door, correct?

19 A Yes.

20 Q And what, if anything, of note did you observe
21 inside the house when you did that?

22 A Nothing. Everything to be in order. It
23 seemed like a normal house.

24 Q And, following, if you know, about how long
25 was that conversation in the house?

1 A I would say 20, 25 minutes.

2 Q And, following that conversation, where did
3 you and Detective Sergeant Lank go?

4 A At that time, we both left the residence and
5 came outside. And, at that time, Lieutenant Gallagher
6 was arriving. We had like a little bit of a powwow,
7 figured out what was going on. That's when we saw
8 Jen McCabe's husband show up and walk in.

9 Q And, again, you didn't know Jennifer McCabe
10 prior to that date, correct?

11 A No.

12 Q Did you know her husband prior to that date?

13 A No.

14 Q And so after you saw her husband, who you now
15 know to be her husband, walk in, what, if anything, did
16 you and Detective Sergeant Lank do?

17 A Sergeant Lank ran back inside to get a
18 statement from Mr. McCabe, as well.

19 Q And did you go with him, as well?

20 A I did not.

21 Q And, after you have sort of the conversation
22 between yourself, Detective Sergeant Lank and
23 Lieutenant Gallagher, what, if anything, did the three
24 of you do from there?

25 A Lieutenant Gallagher immediately said, we need

1 to seal off the area where Officer O'Keefe was located.
2 We grabbed some crime scene tape. He wanted to
3 photograph the area, as well.

4 Q And who, if anyone, grabbed the crime scene
5 tape?

6 A Myself.

7 Q And what, if anything, did you do with it?

8 A I wrapped it around by the flagpole, tree and
9 cruiser. It was hard to keep just because the wind was
10 blowing at such a rate.

11 Q And then what, if anything, did you and the
12 other officers do with respect to the area that was
13 identified to you as where Mr. O'Keefe was upon
14 Officer Saraf's arrival?

15 A Lieutenant Gallagher noticed that the snow was
16 coming down at such a good clip, we couldn't keep it
17 clear and had the idea of anybody having a leaf blower.
18 And I did. So I told him, I'm not too far away from
19 the house. So I shot back to my residence and grabbed
20 my own.

21 Q And about how long a period of time was it
22 between the time that you sort of left to go get the
23 leaf blower and the time that you arrived back with it?

24 A No more than five, seven minutes.

25 Q And, once you arrived back in the area of

1 34 Fairview Road, what, if anything, happened then?

2 A I started it up for Lieutenant Gallagher. He
3 took it over and it worked great.

4 Q Now, with respect to that sort of
5 implementation of the leaf blower, what, if anything,
6 did you or other officers do to sort of memorialize
7 that?

8 A So as Lieutenant Gallagher was using the piece
9 of equipment, I used my iPhone, videotaped it and took
10 two still photos.

11 MR. LALLY: Your Honor, may I approach?

12 THE COURT: Yes.

13 MR. LALLY: Ms. Gilman, if I could have
14 Exhibit No. 33 up on the screen? The first one is
15 fine.

16 (Whereupon, the video is played.)

17 MR. LALLY: Ms. Gilman, if you could pause
18 that just briefly?

19 (Whereupon, the video is paused.)

20 BY MR. LALLY:

21 Q Sergeant Goode, have you seen what's up on the
22 screen as Exhibit 33 before?

23 A Yes.

24 Q And what do you recognize this to be?

25 A That's Lieutenant Gallagher.

1 Q Okay. And what, if anything, does
2 Lieutenant Gallagher have in his hand at the time in
3 this particular video?

4 A The leaf blower.

5 Q And what's depicted on the screen, is that a
6 fair and accurate picture of what you memorialized on
7 scene that day with respect to the leaf blower?

8 A Yes.

9 MR. LALLY: Ms. Gilman, if you could just run
10 just this one video through?

11 (Whereupon, the video is played.)

12 MR. LALLY: Ms. Gilman, if you could stop it
13 right there, please?

14 (Whereupon, the video is paused.)

15 BY MR. LALLY:

16 Q Now, with respect to using that leaf blower on
17 scene, Sergeant, what, if anything, did you observe in
18 the snow when that was used to blow away sort of the
19 layer of the snow?

20 A It exposed the blood and small drinking glass,
21 broken.

22 Q And do you see those items in what's frozen up
23 in the screen right now?

24 A I do.

25 Q If you could, using that laser pointer, direct

1 the jury's attention to where you observe each of those
2 items in this video?

3 A So that's the glass right there and then all
4 the blood droplets.

5 Q Thank you, sir.

6 MR. LALLY: Thank you, Ms. Gilman. You can
7 take that down.

8 BY MR. LALLY:

9 Q Now, prior to using the leaf blower, what, if
10 anything, did Lieutenant Gallagher instruct you and any
11 other officers to do with regard to your cruisers that
12 were parked on scene?

13 A We needed to move them out of the way. He
14 wanted to be able to get a good shot of the area. So
15 we kind of closed off the road.

16 MR. LALLY: And, Ms. Gilman, if I could have
17 Exhibit 41 back up again? Ms. Gilman, if I could
18 ask you to fast forward on this to about 40 minutes
19 and 30 seconds in.

20 (Whereupon, the video is played.)

21 MR. LALLY: If you could pause it right there,
22 please?

23 (Whereupon, the video is paused.)

24 Q Now, Sergeant Goode, what's up on the screen,
25 is that the point that you are referencing now as far

1 as about to move your cruiser for that purpose?

2 A This really wouldn't be moved out of the way
3 of the ambulance, I believe.

4 Q My apologies. Regardless, you recognize this
5 to be camera footage from --

6 A Yes. Just play it forward, I guess.

7 MR. LALLY: Ms. Gilman, if you could, I'd like
8 to play this through to about 41 minutes and 12
9 seconds or so but if you can just pause it. I'm
10 sorry.

11 Q Sergeant, at some point when you moved this
12 cruiser, what, if anything, were you able to see in
13 this footage of the front lawn of 34 Fairview Road?

14 A So my cruiser camera pans the front yard of 34
15 Fairview. And it shows the snow undisturbed, no
16 footprints, any tracks or anything like that leading
17 anywhere.

18 Q Okay. And, if you could just speak up when we
19 get to that point.

20 MR. LALLY: Ms. Gilman, if you could, just
21 pause it on that area of the video.

22 (Whereupon, the video is played.)

23 MR. LALLY: If you could pause it right there.

24 (Whereupon, the video is paused.)

25 Q Now, the area that you were speaking about

1 before, is this sort of the portion of the video?

2 A Yes.

3 Q Okay. And, using the laser pointer, if you
4 could direct the jury's attention to the portion of the
5 yard that you were talking about and indication of no
6 footprints or anything that you observed in that snow.

7 A (Witness complies.)

8 MR. LALLY: Ms. Gilman, if you could just let
9 it run through for a couple more seconds.

10 (Whereupon, the video is played.)

11 MR. LALLY: Thank you. And, Ms. Gilman, you
12 can take it down.

13 Q Now, Sergeant Goode, you had spoke about, as
14 well, some photographs that were taken to memorialize
15 the area of where Mr. O'Keefe was found; is that
16 correct?

17 A Yes.

18 MR. LALLY: May I approach, Your Honor?

19 THE COURT: Yes.

20 BY MR. LALLY:

21 Q I'm going to show you what's been marked as
22 Exhibit 8. First, just if you recognize it?

23 A Yes.

24 Q And what do you recognize that to be?

25 A That is 34 Fairview.

1 MR. LALLY: And, Ms. Gilman, if I could have
2 Exhibit 8 up on the screen?

3 BY MR. LALLY:

4 Q What's up on the screen, is that a fair and
5 accurate portrayal of what you observed on scene that
6 day?

7 A Yes.

8 Q If I could ask you to flip forward in that
9 book before you to Exhibit No. 10.

10 A Okay.

11 MR. LALLY: And, Ms. Gilman, if we could have
12 Exhibit 10?

13 BY MR. LALLY:

14 Q And, Sergeant, what's up on the screen, is
15 that what you have before you as Exhibit 10?

16 A Yes.

17 Q And, similarly, do you recognize that?

18 A Yes.

19 Q And what do you recognize that to be?

20 A That is a scene where our officers and the
21 witnesses found Officer O'Keefe.

22 Q And, if you could, using that laser pointer
23 you have before you, direct the jury's attention to
24 where you were directed to where Mr. O'Keefe was found?

25 MR. YANNETTI: Objection. Hearsay.

1 THE COURT: No. I'll allow it.

2 BY MR. LALLY:

3 Q Go ahead, sir.

4 A (Witness complies.)

5 Q Now, sir, if I could ask you to flip forward
6 in that book just a little bit more to what's been
7 marked as Exhibit No. 20A.

8 A Okay.

9 MR. LALLY: And, Ms. Gilman, if I could have
10 that on the screen, as well.

11 Q And do you recognize what's up on the screen
12 as Exhibit 20A?

13 A Yes. That's the curbing.

14 Q And, as far as the curbing is concerned, how
15 is it sort of cleared off in this particular area?

16 A We'd kick it off with our shoe to clear it off
17 so we could actually see it.

18 Q And, again, that area that you were directed
19 to as far as where Mr. O'Keefe was found, do you
20 observe that in this photograph, Exhibit 20A?

21 A Yes.

22 Q If you could, using the laser pointer before
23 you, direct the jury's attention to where in this
24 photograph that is?

25 A (Witness complies.)

1 MR. LALLY: Your Honor, may I approach just
2 to --

3 THE COURT: Yes.

4 BY MR. LALLY:

5 Q Lastly, I'm just going to show you what's been
6 marked as Exhibit 27. Sergeant, do you recognize that?

7 A I do.

8 MR. LALLY: Ms. Gilman, if we could have 27 on
9 the screen?

10 Q Sergeant Goode, what's up on the screen and
11 what's before you as Exhibit 27 -- I'm sorry.

12 What's up on the screen, is that what you have
13 before you as Exhibit 27?

14 A Yes.

15 Q And, if you could, describe to the jury what
16 we are looking at in this exhibit.

17 A We have the blood and then right here is the
18 broken drinking glass that was located.

19 Q Thank you, sir.

20 A You're welcome.

21 MR. LALLY: Your Honor, may I approach just to
22 retrieve?

23 THE COURT: Yes.

24 MR. LALLY: If I may have just a moment, Your
25 Honor?

1 THE COURT: Yes.

2 BY MR. LALLY:

3 Q Following your time on scene that morning,
4 sir, where did you go from there?

5 A Once we cleared 34 Fairview, I returned to the
6 Canton Police Department.

7 Q And the items that you were talking about as
8 far as the blood, what you believed to be blood
9 droplets in the snow and that piece of a cocktail
10 glass, what, if anything, did you or other officers do
11 with regard to that?

12 MR. YANNETTI: Objection.

13 THE COURT: Overruled.

14 BY MR. LALLY:

15 Q Go ahead, sir.

16 A Detective Sergeant Lank transported those back
17 to the police department.

18 MR. LALLY: Again, just one moment, Your
19 Honor.

20 I have nothing further of this witness, Your
21 Honor.

22 THE COURT: All right. Mr. Yannetti?

23 MR. YANNETTI: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. YANNETTI:

1 Q Good afternoon, Sergeant.

2 A Good afternoon.

3 Q Sir, you and I have never met, correct?

4 A No.

5 Q We've never spoken?

6 A No.

7 Q Sergeant Goode, you grew up in Canton?

8 A I did.

9 Q You attended Canton public schools?

10 A I did.

11 Q You graduated from Canton High School?

12 A I did.

13 Q That would have been in 1998?

14 A Yes.

15 Q Is it true that in your graduating class was
16 somebody named Courtney Proctor?

17 A Yes.

18 Q You knew Courtney Proctor?

19 A Yes.

20 Q You knew her to be Michael Proctor's sister,
21 correct?

22 A Yes.

23 Q Also in your graduating class was somebody
24 named Jill Daniels, correct?

25 A Yes.

1 Q You knew her or you now know her to be
2 Christopher Albert's sister-in-law, correct?

3 A Yes.

4 Q Christopher Albert is married to Jill Daniels'
5 sister, correct?

6 A Yes.

7 Q And you know Christopher Albert as
8 Brian Albert's brother, correct?

9 A Yes.

10 Q So it is fair to say that you graduated
11 high school with Michael Proctor's sister and
12 Christopher Albert's sister-in-law, correct?

13 A Yes.

14 Q And, you know, growing up in Canton and, you
15 know, working for 18 years as a Canton police officer,
16 you're well familiar with the Albert family of Canton,
17 correct?

18 A I work with one of them.

19 Q You know that the Albert familiarity is a
20 well-known family in Canton, correct?

21 A Sure.

22 Q The Albert family is well connected to the
23 town of Canton, correct?

24 A I don't know what you mean by "connected."
25 They live in Canton, yes.

1 Q All right. Well, Christopher Albert is a
2 Canton town selectman; is he not?

3 A Yes.

4 Q And you've already established that
5 Kevin Albert is a Canton police officer, correct?

6 A Yes.

7 Q And you already testified that you knew
8 Brian Albert, as well, and you knew that he was a
9 Boston police officer who lived in Canton, correct?

10 A Yes.

11 Q In fact, he and his family lived at 34
12 Fairview in Canton, correct?

13 A Yes.

14 Q You also knew that his family had been there
15 for years and, before Brian Albert owned the house, his
16 parents owned it, correct?

17 A Yes.

18 Q Now, as of January 28th of 2022, who among the
19 Albert family did you know either personally or
20 professionally?

21 A Professionally is Kevin Albert.

22 Q Okay. And what about personally?

23 A I knew Chris.

24 Q Okay. And you know that Christopher Albert,
25 in addition to being a town selectman, also owns a

1 pizza place in Canton, correct?

2 A Yes, he does.

3 Q What is the name of that pizza place?

4 A That would be D&E.

5 Q And have you eaten there before?

6 A Yes.

7 Q And you've seen Christopher Albert there
8 before?

9 A I have.

10 Q Now, on January 29th of 2022, you learned at
11 approximately 6:00 a.m. that John O'Keefe's body was
12 found on Brian Albert's front lawn, correct?

13 A Yes.

14 Q And, as of January 29th of 2022, you knew that
15 Brian Albert at that time, of course, was the brother
16 of your fellow Canton police officer, Kevin Albert,
17 correct?

18 A Yes.

19 Q And how long have you known Kevin Albert for?

20 A As long as I've worked at the Canton Police
21 Department.

22 Q And that is approximately 18 years?

23 A Coming up on 18 years, yes.

24 Q And is Kevin Albert older or younger than you
25 or around the same age?

1 A He's older than me.

2 Q By how many years, if you know?

3 A I don't.

4 Q Approximately?

5 A Five years.

6 Q Okay. Have you ever shared a patrol car with
7 Kevin Albert?

8 A No.

9 Q Have you ever worked on an investigation or a
10 case with Kevin Albert?

11 A I probably have, yeah.

12 Q In addition to being a colleague, would you
13 also consider Kevin Albert to be a friend?

14 A Yeah. We've socially hung out after work.

15 Q And, because he is a fellow Canton police
16 officer, you'd expect that he would have your back in a
17 crisis, correct?

18 MR. LALLY: Objection, Your Honor.

19 THE COURT: I'll let him have it.

20 THE WITNESS: I hope he would defend me while
21 working, yes. He is a police officer.

22 BY MR. YANNETTI:

23 Q And you would certainly protect him in a
24 crisis, correct?

25 A At work for police officers, yes.

1 Q Well, even out of work. If he was in a
2 crisis, you'd probably help, correct?

3 A I don't know what you're asking.

4 Q All right. Well, there is a teamwork that is
5 part and parcel of being a police officer with your
6 fellow officers, correct?

7 A Sure.

8 Q It's a dangerous job?

9 A Sure.

10 Q You need to have each other's back?

11 A Sure.

12 Q You need to depend on your fellow officers,
13 correct?

14 A Sure.

15 Q And it's been said there's a brotherhood among
16 police officers, correct?

17 A To a fact.

18 Q And, you know, when you meet another police
19 officer, he or she will tell you that they're, quote,
20 "on the job," correct?

21 MR. LALLY: Objection, Your Honor.

22 THE COURT: The objection is sustained.

23 BY MR. YANNETTI:

24 Q And, in terms of, you know, depending on your
25 fellow officers, you're taught all this beginning in

1 the police academy, correct?

2 MR. LALLY: Objection.

3 THE COURT: He can have that.

4 THE WITNESS: What am I taught?

5 BY MR. YANNETTI:

6 Q Well, I'm asking you. With regard to, you
7 know, the teamwork and having each other's backs and,
8 you know, working together and depending on each other,
9 you are taught that starting in the academy?

10 A Sure.

11 Q And it's reinforced over the years by superior
12 officers and your colleagues, correct?

13 A Sure.

14 Q Now, you were assigned as the primary
15 investigator in the reconstruction analysis for this
16 case, correct?

17 A I'm assigned as a what?

18 Q You were assigned as the primary investigator
19 in the reconstruction analysis for this case?

20 A I don't know -- reconstruction analysis? No.
21 I was the patrol supervisor that day.

22 MR. YANNETTI: If I may just have a moment,
23 Your Honor?

24 THE COURT: Okay.

25 MR. YANNETTI: May I approach?

1 THE COURT: Yes.

2 BY MR. YANNETTI:

3 Q Now, I'm going to show you what is -- I'm not
4 sure how many pages, but there are quite a few.

5 A Okay.

6 Q It's a --

7 MR. LALLY: Your Honor, if he could not
8 describe what he's showing to the witness?

9 THE COURT: Yes. Just go ahead and show it to
10 him.

11 MR. YANNETTI: Sure.

12 BY MR. YANNETTI:

13 Q I'm going to direct you -- I'm taking out the
14 first four pages and directing you just to the fifth
15 page, sir.

16 A Okay.

17 Q And, specifically, the second paragraph. And
18 it's numbered number two.

19 A Okay.

20 Q And I will ask you if you've seen that before.

21 A Okay.

22 Q And I'll take it back from you.

23 A Okay.

24 Q Do you recognize what this is?

25 A It looks like some state police form.

1 Q Okay. Is it a --

2 THE COURT: Why don't you not ask him. He
3 just answered what he thought it was.

4 Q Are you familiar with a collision analysis and
5 reconstruction section, a CARS, report?

6 A I know the state police has a CARS section
7 that handles motor vehicle homicide.

8 Q Does this appear to be a CARS report?

9 A I've never seen one. You need to show me one.
10 I'm not in the state police.

11 Q Okay. But you did see that your name is
12 listed in the paragraph that I pointed out to you?

13 A Sure.

14 Q And you're listed as Sergeant Sean Goode.
15 That's you, correct?

16 A Uh-huh.

17 Q Of the Canton Police. And you were assigned
18 as the primary investigator in this reconstruction?

19 A Because I wrote the offense report from that
20 day?

21 Q Well, I'm just asking you. I'm dealing with a
22 state police report that lists you as the primary
23 investigator with regard to the reconstruction.

24 MR. LALLY: Objection, Your Honor. May we
25 approach?

1 THE COURT: Sustained. Sure. Why don't you
2 all come up. Bring that, please.

3 (Whereupon, there was a sidebar conference as
4 follows:)

5 THE COURT: Can I see it, Mr. Yannetti?

6 MR. YANNETTI: Sure. Of course. That is the
7 beginning of the report and that's the paragraph.

8 THE COURT: Who wrote this report?

9 MR. YANNETTI: Not Sergeant Goode. Somebody
10 else.

11 THE COURT: Right. I know from state police.
12 But why don't you take that and tell me the author
13 while I read this.

14 MR. LALLY: It's Trooper Paul, Your Honor.

15 MR. YANNETTI: Yes. Trooper Paul.

16 THE COURT: Okay. Is he on your witness list?

17 MR. LALLY: Yes.

18 THE COURT: Okay. So some of what causes
19 difficulty is asking questions of the wrong
20 witness.

21 MR. YANNETTI: Uh-huh.

22 THE COURT: So he didn't adopt any of this,
23 right?

24 MR. LALLY: That's really not what the report
25 says, Your Honor. He had nothing to do with the

1 reconstruction. In any reconstruction report,
2 they're going to list who the primary investigator
3 is with the involved department.

4 So whoever they spoke to on scene or whoever
5 wrote this OF report is going to be listed in the
6 recon report as a primary investigator. That
7 doesn't mean he had anything to do with the
8 reconstruction.

9 MR. YANNETTI: I can ask another couple of --
10 I didn't know that, but --

11 THE COURT: What was that?

12 MR. LALLY: I would assume Mr. Yannetti knows
13 this.

14 MR. YANNETTI: I did not. I'll ask another
15 couple of questions just to get out of it and I'll
16 move on.

17 THE COURT: Okay.

18 MR. LALLY: Thank you.

19 (Whereupon, the sidebar conference concluded.)

20 BY MR. YANNETTI:

21 Q Sergeant Goode, what was your understanding on
22 February 1st of 2022 regarding the Canton Police
23 Department's role in this homicide investigation?

24 A I believe at some point on the 29th, we
25 recused ourselves and were not even part of the

1 investigation.

2 Q Okay. So you did know as of the day that
3 John O'Keefe was found on Brian Albert's front lawn
4 that the Canton Police had recused itself from the
5 case, correct?

6 A At some point, I was notified after I finished
7 all of my paperwork, yeah.

8 Q And what was your understanding of the recusal
9 decision in terms of what the Canton Police was either
10 allowed to do or not do?

11 A Well, he had passed away. So now, no matter
12 what, it's a state police investigation. It's a
13 homicide. We do not investigate homicides.

14 Q Well, you've been a Canton police officer for
15 18 years, correct?

16 A Yes.

17 Q During those 18 years, do you know how many
18 homicide investigations have occurred in Canton?

19 A None.

20 Q None?

21 A Homicides? No. That I was involved in?
22 None.

23 Q That the department was involved in.

24 A I can't think off the top of my head, no.

25 Q So in the 18 years, this is the first

1 homicide that your department has been involved in to
2 your knowledge?

3 A Yes.

4 Q Okay. Are you aware that although the state
5 police have primary jurisdiction, they work hand in
6 hand with local departments usually unless there is a
7 conflict of interest?

8 A Yes.

9 Q All right. So in this case, you learned that
10 there was a conflict of interest. And my question to
11 you is what did that mean in terms of your potential
12 involvement in the investigation once that conflict was
13 determined?

14 MR. LALLY: Objection, Your Honor.

15 THE COURT: Sustained.

16 BY MR. YANNETTI:

17 Q Were you the primary investigator for the
18 Canton Police Department as of February 1st?

19 A No.

20 Q Did you participate with the state police in
21 any part of the reconstruction?

22 A No.

23 Q Now, Sergeant Goode, who is Brian Higgins?

24 A He is an ATF agent that has a satellite office
25 out of the Canton Police Department.

1 Q And when did you come to meet him?

2 A I have no idea when he started. It's been
3 years.

4 Q It's been years. Over a decade?

5 A I don't think so, but maybe.

6 Q Between five and 10 years?

7 A Sure.

8 Q And how often would you see him at the Canton
9 Police Station?

10 A I worked midnights during that time. But I
11 mean, three times a week I would see him. We don't
12 have the same work schedule. I don't know when he
13 works. He doesn't know when I do.

14 Q Okay. And, when you say you work midnights,
15 that means you come in at midnight and you leave at
16 8:00 a.m.?

17 A Correct.

18 Q And he works in the same building as you in
19 terms of the fact that he has an office there, correct?

20 A Yes.

21 Q Are there any other ATF agents that have
22 offices at the Canton Police Department?

23 A There could be. I don't -- they don't check
24 in with us.

25 Q Do you know of any ATF agents that have

1 offices at the Canton Police Department?

2 A Not that I know of, no.

3 Q What about officers from other local
4 departments, surrounding towns? Do they have any
5 offices at the Canton Police Department?

6 A No.

7 Q And you're not sure exactly how long he's had
8 that office for, but it's been years?

9 A Correct.

10 Q He has his own keycard to enter the building?

11 A Yes.

12 Q And you say you've seen him two or three times
13 a week in the time that he's had an office there?

14 A Sure.

15 Q You're aware that Brian Higgins is a
16 close friend of the former Canton Police Chief,
17 Kenneth Berkowitz?

18 A Sure.

19 Q You know that Chief Berkowitz was the reason
20 that he was allowed to maintain an office at the Canton
21 Police Department?

22 A I didn't know that.

23 Q Well, his close friend, Chief Berkowitz, was
24 your boss on January 29th of 2022, correct?

25 A His close friend?

1 Q Yes. Brian Higgins' close friend,
2 Chief Berkowitz, was your boss on January 29th of 2022.

3 A Okay.

4 Q Does okay mean yes?

5 A Yes.

6 Q And you worked the midnight shift that day, as
7 well?

8 A No.

9 Q What was your shift?

10 A I took it off.

11 Q Were you assigned to dispatch that day?

12 A The night of the incident?

13 Q Yes.

14 A No. I stayed inside. I was inside.

15 Q Inside where?

16 A The dispatch. I handle all the calls.

17 Q All right. That was my question. I'm sorry
18 if I'm not being clear. But you were on duty, correct?

19 A Yes.

20 Q What was your shift?

21 A My shift was I stayed inside.

22 Q I'm sorry. What was the timing of your shift?

23 A Twelve to eight.

24 Q Thank you. And, when you say you stayed
25 inside, that meant you were handling dispatch, correct?

1 A Correct.

2 Q And, when you're handling dispatch, you're not
3 expected to leave the station and physically respond to
4 calls that come in, correct?

5 A It depends on the call. Anything within
6 reason that a supervisor should go, I'll lead in the
7 station. Normal car accidents and stuff like that that
8 patrol can handle, no.

9 Q Okay. So unless it's something unusual,
10 you're going to stay at dispatch, correct?

11 A Correct.

12 Q And just after 1:30 a.m. while you were
13 working dispatch, that's when you saw Brian Higgins
14 enter the Canton Police Station at 1:30 in the morning,
15 correct?

16 A Correct.

17 Q Did he come into the dispatch area?

18 A I said that earlier. I don't remember him
19 coming in or just did I see him on the cameras, walking
20 down the hallway. We have numerous, maybe seven or
21 eight, monitors in front of me that I'm able to watch
22 people around our building.

23 Q So it could be that you just saw him on a
24 screen or it could be that he was in your room?

25 A Correct.

1 Q But you don't remember which, correct?

2 A Correct.

3 Q And, before he showed up there at 1:30, you
4 hadn't called him to ask him to come in, correct?

5 A No.

6 Q You hadn't asked him for any help with any
7 investigation at 1:30, correct?

8 A No.

9 Q When you first saw him there at 1:30, did you
10 have any idea why he was showing up there?

11 A No.

12 Q And, when you first saw him, do you remember
13 what entrance he used to come into the Canton Police
14 Station?

15 A I don't. It was from the back parking lot. I
16 don't know if he was on the left back rear or right
17 back rear.

18 Q And you would agree with me that 1:30 in the
19 morning was hours before John O'Keefe was found
20 unresponsive on Brian Albert's front lawn, correct?

21 A Yes.

22 Q All right. You had no information at 1:30 in
23 the morning that John O'Keefe was out on Brian Albert's
24 front lawn at that time, correct?

25 A Correct.

1 Q And, when Brian Higgins entered the
2 department, that was the first time you had seen him on
3 either the 28th or the 29th, correct?

4 A Correct.

5 Q And this was, again, at 1:30 in the morning?

6 A Uh-huh.

7 Q And you have to say yes or no.

8 A Yes.

9 Q All right. You didn't know where he was
10 coming from?

11 A No.

12 Q You didn't know what he had done that night?

13 A Absolutely not.

14 Q You didn't know who he had been with that
15 night?

16 A No.

17 Q This was a Friday night, into early Saturday
18 morning with a major blizzard forecast?

19 A Correct.

20 Q It had already started snowing?

21 A Yes.

22 Q It was supposed to get worse?

23 A Yes.

24 Q Was it unusual to see Brian Higgins come into
25 the station at 1:30 a.m. on a weekend?

1 A No.

2 Q And you don't recall how close you got to him?

3 A No.

4 Q Are you able to tell this jury anything about
5 his demeanor?

6 A No. He walked in. It's not unusual we
7 wouldn't have made pleasantries or say "hello" to each
8 other. It's not uncommon.

9 Q And you don't recall whether or not you got
10 close enough to him to smell his breath or to smell
11 what he smelled like, correct?

12 A No.

13 Q At any point, did he tell you why he was
14 there?

15 A No.

16 Q How long did he remain at the station for?

17 A No idea. I only saw him come in. I never saw
18 him leave or anything like that.

19 Q Did you ever see him do any paperwork at the
20 station?

21 A That night?

22 Q Yes.

23 A No.

24 Q Did you ever see him do any administrative
25 work at the station?

1 A I can't leave the dispatch room. His office
2 is on the second floor.

3 Q All right. So let's skip ahead a few hours
4 later. You're still working dispatch when a call came
5 in that a man was found unresponsive on Brian Albert's
6 front lawn, correct?

7 A Yes.

8 Q This is just after 6:00 a.m.?

9 A Yes.

10 Q You, yourself, took that call?

11 A I did.

12 Q And, with regard to who is responsible for
13 entering the information that came in on a call to
14 dispatch, who is that?

15 A The person that's working the desk.

16 Q All right. So at 6:00 a.m., you were
17 responsible for taking down the information and
18 entering it into your system, correct?

19 A It's being recorded to the 911 dispatch.
20 Correct. But I didn't enter it into our IMC program,
21 which is our daily log.

22 Q Okay. Who enters that into your daily log?

23 A That would be the person that's working the
24 desk.

25 Q Okay. And you had previously testified that

1 location is important, correct?

2 A Correct.

3 Q You would discuss the fact that if a call
4 comes in on a cell phone as opposed to a land line, you
5 want to know where that cell phone is, correct?

6 A Yes.

7 Q And you have ways of pinging the cell phone
8 such that you can actually see the location on a map,
9 correct?

10 A Sure. Yes.

11 Q And you would agree with me that ultimately
12 when the location was entered into your system, the
13 location was entered as 32 Fairview, correct?

14 A No. It was 34. At least we know it as 34.

15 Q Thirty-four was the actual address. But 32 is
16 what made it into the police report, sir, did it not?

17 A No. My police report says 34 Fairview.

18 Q Okay. Now, when that call came in after 6:00
19 a.m., you decided that you would personally go out,
20 correct?

21 A Yes.

22 Q Okay. I actually have the front page of your
23 police report.

24 MR. YANNETTI: May I approach, Your Honor?

25 THE COURT: Yes. Show Mr. Lally.

1 MR. YANNETTI: Yes.

2 BY MR. YANNETTI:

3 Q I'd ask you to read that silently to yourself,
4 take a good look at it, and look up at me when you're
5 done.

6 A Okay.

7 Q You've had enough time to review it?

8 A Yes.

9 Q Getting back to the location which you said
10 was important, what is the location listed in your very
11 police report?

12 A On the face sheet, it says 32. But in my
13 narrative it is 34.

14 Q Okay. The face sheet is important, is it not?

15 A Yes.

16 Q People see the face sheet before they get to
17 the narrative, correct?

18 A Sure.

19 Q Is accuracy important?

20 A Yes.

21 Q And the very first thing that's entered with
22 regard to the location is inaccurate, right?

23 A Say it again?

24 Q The very first entry with regard to the
25 location on your police report on the face sheet is

1 inaccurate. Would you agree with that?

2 A I guess so, yes.

3 Q And, with regard to the name down the bottom
4 of that report, I left the report in front of you just
5 so you could look at it again, would you read that
6 silently to yourself and look up at me?

7 A Okay.

8 Q Does that refresh your memory as to what name
9 is listed?

10 A Yes.

11 Q What name is that?

12 A John O'Keefe.

13 Q If I could have that back for a minute?

14 Okay.

15 Now, you decided that you wanted to go to the
16 call or you decided it would be a good thing for you to
17 go to the call personally, correct?

18 A Yes.

19 Q So you called Officer Kelly Dever into
20 dispatch?

21 A I did.

22 Q And you did that because you wanted her to
23 cover the desk for you so that you could personally
24 respond to the call, correct?

25 A Correct.

1 Q Responding to the call wasn't your duty
2 assignment, but you made it your duty assignment,
3 correct?

4 A Correct.

5 Q And, if you were going to leave, somebody had
6 to cover?

7 A Correct.

8 Q After that, you personally called two of your
9 other colleagues who were not on duty that night to
10 respond with you to Brian Albert's house, correct?

11 A Yes, I did.

12 Q And you previously testified, I believe, that
13 sergeant Michael Lank was one of those officers and he
14 arrived at 6:25 a.m., correct?

15 A Correct.

16 Q And then Lieutenant Paul Gallagher was the
17 other officer, and he arrived closer to 7:00 a.m.,
18 correct?

19 A Yes.

20 Q When you responded to 34 Fairview on January
21 29th, did you know that residence?

22 A Yes.

23 Q And what did you know that residence to be?

24 A I knew that to be Brian Albert's house.

25 Q You and Sergeant Lank had both been to that

1 residence before, correct?

2 A No.

3 Q Together?

4 A Actually, we have. We were there for a police
5 report years ago.

6 Q Okay. And so when you decided to respond to
7 the scene on January 29th, that residence at 34
8 Fairview, you knew exactly where you were going,
9 correct?

10 A Yes.

11 Q And, when you got there, you knew you were
12 outside the home of Boston Police Officer Brian Albert,
13 correct?

14 A Yes.

15 Q And this was a memorable event. Would you
16 agree with me?

17 A Yes.

18 Q Before January 29th of 2022, you had never
19 responded to a call where the body of one police
20 officer was found on the front lawn of another police
21 officer's house, correct?

22 A Yes.

23 Q And, at some point after you arrived, you saw
24 both Sergeant Lank and Detective Gallagher arrive,
25 correct?

1 A Yes.

2 Q It was Sergeant Lank who first entered the
3 home and made initial contact with Brian Albert and his
4 family?

5 A No. I was right next to him.

6 Q So is it your testimony that the first time
7 the police went in the house, you were there with
8 Sergeant Lank?

9 A Yes.

10 Q And, when you went in -- could I have Exhibit
11 8 on the screen, please?

12 Okay. Terrific. You're able to see Exhibit
13 8, Sergeant?

14 A Yes.

15 Q Is that a fair depiction of what the house
16 looked like when you entered it?

17 A Yes.

18 Q Do you see the front door?

19 A Yes.

20 Q Is that the door that you entered?

21 A Yes.

22 Q And you had testified that you, you know,
23 looked around the immediate area where you were while
24 Sergeant Lank was asking questions. You noticed that
25 when you entered that front door, you come into a foyer

1 area and directly in front of you on the left, you
2 could almost reach out and touch -- there is a door
3 that goes down to the cellar; is there not?

4 A I don't know. I don't remember a door there.
5 I remember the stairs going up to the second floor.

6 Q I see. So you don't remember that as you step
7 into the house, you can go down a cellar door right
8 away?

9 MR. LALLY: Objection.

10 THE WITNESS: No. I don't know where the
11 cellar is.

12 THE COURT: The objection is sustained.

13 BY MR. YANNETTI:

14 Q All right. You don't know where the cellar is
15 and that's in part because you did not go down to the
16 cellar, correct?

17 A Correct.

18 Q You never examined it?

19 A No.

20 Q You never saw what condition it was in?

21 A No.

22 Q You never saw whether there was any signs of
23 struggle down there?

24 A No.

25 Q You never saw if anything was tipped over?

1 A No.

2 Q You never saw whether there was any blood or
3 other trace evidence down there?

4 MR. LALLY: Objection, Your Honor.

5 THE COURT: The objection is sustained. You
6 made your point.

7 Would you turn the lights back on, please? Do
8 you need this Mr. Yannetti?

9 MR. YANNETTI: I do not. Thank you.

10 BY MR. YANNETTI:

11 Q Okay. Now, going back to when you first
12 arrived, Sergeant, you were alone in your cruiser,
13 correct?

14 A Yes.

15 Q You weren't driving with a partner that
16 morning?

17 A No.

18 Q You were the second officer on scene?

19 A No. Third.

20 Q Who got there before you did?

21 A Officer Saraf and Officer Mullaney.

22 Q Okay. So Mullaney actually beat you there?

23 A Yes.

24 Q But only within a matter of minutes, correct?

25 A Sure.

1 Q You arrived in your marked cruiser, correct?

2 A Yes.

3 Q You had your overhead emergency lights on,
4 correct?

5 A Correct.

6 Q You pulled up right in the front of the house,
7 facing in the wrong direction in terms of the lane that
8 you were in?

9 A Correct.

10 Q You were parked on Fairview, adjacent to the
11 Albert residence, and you were facing towards
12 Cedarcrest, correct?

13 A Correct.

14 Q When you parked, you left your motor running,
15 correct?

16 A Yes.

17 Q And, when you got out of your cruiser, one
18 prominent sound that you heard was Karen Read screaming
19 at the top of her lungs, correct?

20 A Yes.

21 Q She appeared to be in distress?

22 A Correct.

23 Q She appeared to be crying?

24 A I did not see her crying.

25 Q She was hysterical?

1 A Yes.

2 Q She was very loud?

3 A Yes.

4 Q And you could hear her yelling throughout that
5 morning, could you not?

6 A Correct.

7 Q After you got there, other emergency vehicles
8 showed up?

9 A No.

10 Q Did you see any other cruisers show up?

11 A If you want to call an unmarked detective
12 pickup a cruiser, sure.

13 Q So there was one additional vehicle that
14 showed up?

15 A Sergeant Lank arrived in that and then
16 Lieutenant Paul Gallagher arrived in his unmarked
17 cruiser.

18 Q Okay. So two additional vehicles. And also
19 Officer Saraf's vehicle was there?

20 A And Mullaney's.

21 Q And Mullaney's. So we're now up to four
22 police vehicles on scene?

23 A Yes.

24 Q They all had their lights on?

25 A No. Detective Sergeant Lank's does not have

1 any lights in it and neither did Paul Gallagher's, I
2 believe.

3 Q I see. So you and Saraf and Mullaney had your
4 lights on?

5 A Correct.

6 Q And I actually miscounted. That would be five
7 police vehicles, correct?

8 A Sure.

9 Q All right. Three with their lights on. What
10 about ambulances?

11 A There were two ambulances that showed up, one
12 for the first transport of Officer O'Keefe and then
13 second for Ms. Read. But they were never there at the
14 same time.

15 Q All right. When you first got there, was the
16 first ambulance there?

17 A It was.

18 Q And that ambulance also had its lights on?

19 A Yes.

20 Q How many fire trucks were there when you were
21 there?

22 A Just one.

23 Q And that also had its lights on, as well?

24 A Yes.

25 Q And engine running?

1 A Yes.

2 Q And everyone was essentially parked around and
3 in front of 34 Fairview, correct?

4 A Correct.

5 Q And, all the while, the first responders are
6 talking over the noise of the storm, correct?

7 A Yes.

8 Q And they are also talking over the screaming
9 by Karen Read, correct?

10 A Sure.

11 Q At one point, Kerry Roberts even yelled at
12 Karen, and I apologize for the language, but she yelled
13 at her to shut the fuck up, correct?

14 A I have no idea. I don't recall that.

15 Q The scene was very chaotic, would you agree?

16 A Yes.

17 MR. YANNETTI: All right. Could I have
18 Exhibit 16 on the screen, please?

19 Q Okay. Now, this has previously been admitted
20 as sort of a side-to-side comparison between your
21 cruiser dash cam and Officer Saraf's dash cam.

22 A Okay.

23 Q And they've been synchronized.

24 A Okay.

25 MR. YANNETTI: If we could start at nine

1 minutes in, please.

2 THE COURT: So, Mr. Yannetti, this is not yet
3 in evidence?

4 MR. YANNETTI: I had it as Exhibit 16. Am I
5 incorrect?

6 THE COURT: Right. Right. So it is not in
7 yet.

8 MR. YANNETTI: I see.

9 (Whereupon, the video is played.)

10 BY MR. YANNETTI:

11 Q With regard to your dash cam, sir, do you
12 recognize the bottom video here as depicting your view
13 as you were driving to the scene?

14 A Sure.

15 Q And that appears to be a fair and accurate
16 representation of what was shown to you on direct
17 examination with regard to your dash cam?

18 A Yes.

19 MR. YANNETTI: Okay. You can pause it there.

20 (Whereupon, the video is paused.)

21 Q Would you agree with me, Sergeant Goode, that
22 you were arriving on the scene at approximately 6:16
23 a.m. on January 29th?

24 A Yes.

25 Q And I'd ask you to review and compare your

1 dash cam video with the top dash cam video for the next
2 30 seconds or a minute, please, and I'll ask you some
3 questions after that.

4 A Sure.

5 (Whereupon, the video is played.)

6 MR. YANNETTI: You can pause it.

7 (Whereupon, the video is paused.)

8 Q Sergeant Goode, does it appear as though the
9 top dash cam shows the exact same thing as the bottom
10 dash cam, just from a different vantage point?

11 A Yes.

12 MR. YANNETTI: Can you play another 20 or 30
13 seconds?

14 (Whereupon, the video is played.)

15 MR. YANNETTI: You can pause it there.

16 (Whereupon, the video is paused.)

17 Q Were you able to see that when people are
18 moving or when somebody's moving in the top version,
19 they're also moving in the bottom version, just, again,
20 from different vantage points?

21 A Yes.

22 Q So do these both appear to be fair and
23 accurate representations of the dash cams that were
24 going on at that time?

25 A Yes.

1 MR. YANNETTI: I would offer that, Your Honor.

2 THE COURT: Okay. I'd like to see counsel at
3 sidebar for just one second.)

4 (Whereupon, there was a sidebar conference as
5 follows:)

6 THE COURT: Okay. If there is no objection to
7 it, I'm going to let it in. I only have one
8 question.

9 MR. YANNETTI: Uh-huh.

10 THE COURT: So it's been altered in that it
11 says (as read), "Officer Saraf dash cam and
12 Officer Goode dash cam." Their own dash cams don't
13 say that. They are just numbers.

14 MR. YANNETTI: True.

15 THE COURT: And it's two of them spliced
16 together or put together. Are there any other
17 alterations to this?

18 MR. YANNETTI: No. It's just only the
19 wording. That's it.

20 MR. JACKSON: The labeling and the
21 synchronization. That's it

22 MR. YANNETTI: Yes. That's it.

23 THE COURT: All right.

24 MR. JACKSON: Thank you.

25 THE COURT: That will be admitted as Exhibit

1 16.

2 (Whereupon, the sidebar conference concluded.)

3 THE COURT: So this will now become Exhibit
4 16.

5 (Whereupon, there was a discussion off the record.)

6 MR. YANNETTI: Okay. We can now take that off
7 the screen.

8 BY MR. YANNETTI:

9 Q Now, Sergeant Goode, you've testified that you
10 got there at about 6:16 a.m., relying on Exhibit 16,
11 that I've placed before you, correct?

12 A Okay. Yes.

13 Q You stayed on scene for over an hour and 40
14 minutes; would you agree with that?

15 A Yes.

16 Q You left around 7:50 a.m. or so?

17 A Correct.

18 Q And, during the beginning part of the one hour
19 and 40 minutes that you were on scene, with all the
20 vehicles that we've just seen at around 6:16 a.m. and
21 for the first 10 or 15 minutes with all of those lights
22 flashing, you never saw Brian Albert come out of his
23 house, correct?

24 A Correct.

25 Q And did you see first responders working on

1 John O'Keefe when you were there?

2 A No.

3 Q He had already been loaded into the ambulance
4 at that time?

5 A Correct.

6 Q So you didn't see him actually being scooped
7 up and put on a stretcher, correct?

8 A I don't recall, no.

9 Q And, with regard to the remainder of the time
10 that you were on scene, up until all the way through
11 7:50 in the morning, did you ever see Brian Albert come
12 out of his home?

13 A No.

14 Q Did you ever see anyone come out of the Albert
15 residence?

16 A Other than Jen McCabe and Matt McCabe, no.

17 Q Were you aware when you entered the Albert
18 residence that morning that John O'Keefe was found on
19 his front lawn wearing only one shoe, black in color?

20 A I was not aware of him missing a shoe, no.

21 Q While you were there, you were listening
22 to the questions that Sergeant Lank was asking
23 Brian Albert?

24 A Yes.

25 Q Did you ever hear Sergeant Lank ask

1 Brian Albert that morning if he knew where the other
2 shoe was that was black in color?

3 MR. LALLY: Objection.

4 THE COURT: Sustained.

5 BY MR. YANNETTI:

6 Q While you were there, did you ever hear
7 Sergeant Lank ask Brian Albert when he learned that
8 John O'Keefe was lying on his front lawn?

9 MR. LALLY: Objection.

10 THE COURT: Sustained.

11 BY MR. YANNETTI:

12 Q You knew that Brian Albert was a Boston police
13 officer is a first responder?

14 A Yes.

15 Q All police officers are first responders,
16 correct?

17 A Yes.

18 Q You know from your training that all police
19 officers have to receive CPR and other necessary
20 training to be first responders, correct?

21 A Yes.

22 Q At any point in time, did you ask Brian Albert
23 why he didn't come out of his house?

24 A No.

25 Q Did Sergeant Lank, in your presence, ask him

1 why he didn't come out of his house?

2 MR. LALLY: Objection.

3 THE COURT: Sustained.

4 BY MR. YANNETTI:

5 Q After clearing the scene at 7:50 in the
6 morning, did you go back to the station?

7 A I did.

8 Q Do you know whether or not Kevin Albert was
9 working that day?

10 A I don't.

11 Q Did you see Kevin Albert that day?

12 A I don't recall seeing him.

13 Q Did you speak with Kevin Albert that day?

14 A No.

15 Q Now, since that day, it's been almost two and
16 a half years. You've continued working on the same
17 police force as Kevin Albert, correct?

18 A Yes.

19 Q At some point in time, you and Kevin Albert
20 discuss the fact that you were one of the first
21 responding officers to his brother's home for this
22 tragic incident, correct?

23 A Yes.

24 Q It's a very unique situation, correct?

25 A Yes.

1 Q Many officers on your department were
2 interested to know what you saw and heard that day,
3 correct?

4 A Sure.

5 Q At what point in time after January 29th did
6 Kevin Albert broach the topic with you as to what had
7 happened on January 29th?

8 MR. LALLY: Objection.

9 THE COURT: Can you answer that?

10 THE WITNESS: Sure. I don't recall ever
11 immediately talking to Kevin Albert about the
12 incident, no.

13 BY MR. YANNETTI:

14 Q Right. Well, you had said that you don't
15 recall talking to him that day. But certainly within a
16 couple of weeks, the two of you caught up, correct?

17 A I can't remember, no.

18 Q I'm sorry?

19 A I can't recall that, no.

20 Q Within a couple of months you talked about it?

21 A Sure.

22 Q And, when you say "sure," sir, I take that as
23 you're saying, well, if you really want to go there,
24 I'll give you the "sure" answer. You have to answer
25 yes or no.

1 A Okay. Yes.

2 MR. LALLY: Objection, Your Honor.

3 THE COURT: So you answer yes or no if you
4 can. And, if you can't, you can't.

5 THE WITNESS: Okay.

6 THE COURT: So ask the question again or just
7 move on, please.

8 MR. YANNETTI: Okay.

9 BY MR. YANNETTI:

10 Q Do you recall where you were when you and
11 Kevin Albert discussed what had happened on January
12 29th?

13 A No.

14 Q Do you recall who else was present?

15 A No.

16 Q Do you recall whether it was in person or over
17 the phone?

18 A I don't recall, no.

19 Q But you certainly told him what you observed
20 and heard that day, correct?

21 A Yes.

22 Q Now, when you arrived, you were on scene not
23 only to assist with, you know, first aid and secure the
24 scene. But, as a first responder, your job is to
25 assess the situation and also make an initial

1 determination about gathering evidence. Would you
2 agree with that?

3 A Yes.

4 Q So you'd be on the lookout for any physical
5 evidence, correct?

6 A Yes.

7 Q And you'd certainly be on high alert for an
8 individual who made any statement about what may have
9 occurred, correct?

10 A Correct.

11 Q That's important not only for treatment
12 purposes of somebody who apparently is hurt but also
13 for investigative purposes, correct?

14 A Correct.

15 Q And, again, you were the third officer on the
16 scene by minutes in terms of the other two officers
17 arriving before you, correct?

18 A Yes.

19 Q And, while you were on scene for over an hour
20 and 40 minutes -- and, by the way, when I say "on
21 scene," it's clear to you that I'm asking you about 34
22 Fairview, correct?

23 A Yes.

24 Q There was no scene at the Canton Police
25 Department, correct?

1 A No. I'm talking about 34 Fairview.

2 Q Of course. A scene is where something
3 happened, correct?

4 A Yes.

5 Q All right. While you were on scene at
6 34 Fairview for an hour and 40 minutes, did you ever
7 once hear Karen Read say, I hit him, I hit him, I hit
8 him, I hit him?

9 A I did not.

10 Q And you wrote a report regarding this,
11 correct?

12 A I did.

13 Q You are trained over your 18 years that you
14 include every important detail in that report, correct?

15 A Correct.

16 Q Certainly a statement by Karen Read, screaming
17 out, I hit him, I hit him, I hit him, I hit him, would
18 have been an important detail that you would have
19 included in your report, correct?

20 A Yes.

21 Q You do not intentionally admit -- omit, I
22 should say, any important details from your report,
23 correct?

24 A Correct.

25 Q You did not include that language, I hit him,

1 I hit him, I hit him, I hit him in your report,
2 correct?

3 A Correct.

4 Q And the reason you didn't include it is that
5 you never heard those words come out of Karen Read's
6 mouth, correct?

7 A Correct.

8 Q Okay. Now, getting back to potential physical
9 evidence, if you're at a potential crime scene, you
10 want to find what you can, correct?

11 A Correct.

12 Q You want to properly secure any physical
13 evidence, right?

14 A Correct.

15 Q In order to assist the investigation, you're
16 prepared to conduct a thorough search for evidence that
17 may shed light on what had happened, correct?

18 A Correct.

19 Q And you did participate in a thorough search
20 in this case, did you not?

21 A The best we could in the elements that we
22 had --

23 Q Sure. And you had previously --

24 A Yes.

25 Q I'm sorry. I don't mean to cut you off if I

1 did.

2 A No.

3 Q You had previously testified, and I think I'm
4 quoting you, the leaf blower worked great, correct?

5 A Yes.

6 Q You would agree with me that with that leaf
7 blower, your department was able to actually get down
8 to the bare ground, correct?

9 A Yes.

10 Q And you were directed to the precise area
11 where John O'Keefe had been laying, correct?

12 A Yes.

13 Q And so you knew the area that needed to be
14 searched, correct?

15 A Yes.

16 Q You certainly want to properly search around
17 that area, correct?

18 A Correct.

19 Q And, after John O'Keefe was in the ambulance
20 and then transported to the hospital, that was the very
21 area that you were eyeballing, correct?

22 A Yes.

23 Q And you visually searched that area as best
24 you could in the conditions, correct?

25 A Yes.

1 Q And you tried to be as careful as you could
2 be?

3 A Yes.

4 Q You did not want to miss anything?

5 A Correct.

6 Q You took your job very seriously?

7 A Yes.

8 Q Now, in addition to scouring the area with
9 your eyes, did you use your hands to search in the
10 snow?

11 A I don't remember doing that. I was recording
12 it.

13 Q I'm sorry?

14 A I don't remember it that way. I was recording
15 the scene.

16 Q I see. Did you see other officers using their
17 hands to search the scene?

18 A I don't recall that.

19 Q You do recall officers using their feet to
20 clear some areas, correct?

21 A Yes.

22 Q And you were the one that actually got your
23 leaf blower, correct?

24 A I did.

25 Q The first time you ever used that in an

1 investigation, fair to say?

2 A Yes.

3 Q And your search was thorough enough -- and,
4 when I say "your search," I mean your department's
5 search in addition to your observations. It was
6 thorough enough that you actually did recover small
7 droplets of blood, correct?

8 A We did.

9 Q Who was it that collected those blood
10 droplets?

11 A That was Lieutenant Gallagher and Sergeant
12 Lank.

13 Q In addition to the blood droplets, you were
14 looking for anything else that might be out of place
15 there?

16 A Sure.

17 Q Small items?

18 A Of course.

19 Q Large items?

20 A Anything.

21 Q And, as you were on scene, it was starting to
22 get lighter as the morning progressed, correct?

23 A Yes.

24 Q And, again, you didn't clear the scene until
25 almost 8:00 a.m.?

1 A Correct.

2 Q And you searched and were keeping alert to
3 what was around you for the time that you were on
4 scene, correct?

5 A Yes.

6 Q During that 100 -- I'm sorry -- that one hour,
7 I should say, and 40 minutes, you did not find 45
8 pieces of red and black and clear taillight pieces at
9 34 Fairview, correct?

10 A No.

11 Q How many pieces of taillight did you find on
12 or around that property?

13 A That morning, none.

14 Q Did you find a men's hat, black in color?

15 A No.

16 Q Did you find a Size 12 men's shoe, black in
17 color?

18 A No.

19 Q Now, you would agree that it's important to
20 preserve and secure a crime scene?

21 A Yes.

22 Q And why is that?

23 A You don't want the crime scene to be
24 contaminated.

25 Q And you also do not want, and you'd like to

1 prevent a crime scene also being manipulated. Would
2 you agree with that?

3 A Yes.

4 Q What steps were taken either by you or in your
5 presence to close off and secure the crime scene at 34
6 Fairview?

7 A We had crime scene tape up while we were
8 there, and then we also had Officer Mullaney on the
9 road.

10 Q And, when you say you had Officer Mullaney on
11 the road, do you mean blocking off the road?

12 A Yes. Correct.

13 Q Are you aware of something called a crime
14 scene log?

15 A No.

16 Q Do you recall being trained in the academy
17 that when there is a crime scene that needs to be
18 preserved, it is advisable to set up a log so that all
19 personnel are required to sign in and sign out, again,
20 to prevent contamination and to prevent manipulation.
21 Do you not recall that training?

22 A I don't recall that, no.

23 Q With regard to the fact that it was actively
24 snowing at the time, did you consider putting a tent
25 around the area to prevent and minimize the

1 environmental intrusions like the snow?

2 A It would have been useless.

3 Q Did you utilize any heaters to assist in
4 melting the snow in that area?

5 A No.

6 Q And before you cleared the scene or, I should
7 say, when you cleared the scene, did you post an
8 officer to guard the scene so that nobody could get in
9 or out?

10 A No.

11 Q How long was the road closed off for?

12 A While we there, those two hours.

13 Q All right. And then after the two hours,
14 there was nobody guarding the scene. Would you agree?

15 A Yes. Correct.

16 Q The road was not closed off?

17 A No.

18 Q That crime scene was open to the public?

19 A Correct.

20 Q So with regard to, you know, a crime scene
21 log, a tent, heaters, keeping an officer there to make
22 sure nobody got in or out of that crime scene, you
23 would agree none of those protocols were followed,
24 correct?

25 A I don't believe there is a protocol for a tent

1 in our policy.

2 Q Okay. So I guess leave the tent out of it.
3 None of those other protocols were followed, correct?

4 A Correct.

5 Q And certainly a tent was not put up, either,
6 correct?

7 A Correct.

8 Q Now, with regard to your police report, going
9 back to that, your report clearly listed persons
10 involved in the case, correct?

11 A Correct.

12 Q And that police report is generated by
13 computer software, correct --

14 A Yes.

15 Q -- that's particular to police reports?

16 A Correct.

17 Q And that's one of the categories that you can
18 fill in, correct?

19 A Correct.

20 Q And would you agree with me that with regard
21 to all of the persons involved listed in your police
22 report, everybody's first name and last name was
23 completely spelled out except for one. Would you agree
24 with that?

25 A I don't. I believe those names were entered

1 by Detective Sergeant Lank.

2 Q Okay. But certainly the report has your name
3 on it, correct?

4 A Correct.

5 Q So you would review the report before
6 submitting it in your name, correct?

7 A Correct.

8 Q So regardless of who entered or didn't enter,
9 my question remains, which is that with regard to the
10 persons involved listed in that report, everybody's
11 name, first and last, is spelled out except for one,
12 correct?

13 A Correct.

14 Q Whose name was not spelled out completely?

15 A I don't know.

16 MR. YANNETTI: If I may approach?

17 THE COURT: Okay.

18 MR. YANNETTI: Page 2, counsel.

19 BY MR. YANNETTI:

20 Q And I'd just ask you to look at it silently
21 and then look up at me when you're done.

22 A (Witness complies.)

23 Q Thank you, sir.

24 A You're welcome.

25 Q Having reviewed that report, does that refresh

1 your memory whose name was not completely spelled out?

2 A Correct.

3 Q And who was that?

4 A Brian Albert.

5 Q Did you omit Brian Albert's first name to mask
6 the fact that he was involved?

7 A No. No.

8 Q Do you know who Colin Albert is?

9 A I know he is Chris Albert's son

10 Q And so, therefore, he'd be Brian Albert's
11 nephew?

12 A Yes.

13 Q Anywhere in your report do you mention that
14 Colin Albert was present at 34 Fairview the night of
15 January 28th, going into January 29th?

16 A No.

17 Q Now, would you agree with me that this report
18 also lists home addresses for everyone in the "persons
19 involved" section except for one person?

20 A Can I see the sheet again?

21 Q Of course.

22 MR. YANNETTI: If I may approach?

23 THE COURT: Yes.

24 BY MR. YANNETTI:

25 Q This is the same sheet that I sent you last

1 time.

2 A Thank you.

3 Q And take your time looking, sir.

4 Thank you. Sergeant, do you know what I'm
5 talking about?

6 A Yes.

7 Q What am I talking about?

8 A Brian Higgins.

9 Q So with regard to Brian Higgins, his home
10 address was not listed on there, correct?

11 A Correct.

12 Q And what address was listed for Brian Higgins?

13 A 1492 Washington Street.

14 Q And what is significant about that address?

15 A It's the town of Canton.

16 Q It's the Town of Canton Police Department?

17 A Correct.

18 Q Now, Brian Higgins was not an involved person
19 because he was an investigator on the case, correct?

20 A Correct.

21 Q He was not involved in this case in an
22 official capacity, correct?

23 A Correct.

24 Q But you were, right?

25 A Yes.

1 Q So listing the Canton Police Department as
2 Sergeant Sean Goode's address would be appropriate,
3 would you agree?

4 A Yes.

5 Q Why was Brian Higgins' address listed as the
6 Canton Police Department?

7 A I don't know.

8 Q But that is something that you kept in your
9 report, correct?

10 A Correct.

11 Q Now, I also want to ask you something else
12 about your police report. And I want to focus on
13 whether it was altered after it was first submitted.
14 Okay?

15 THE COURT: Hold on. Do you have your report
16 with you?

17 THE WITNESS: I do not.

18 THE COURT: Do you have a copy for him,
19 Mr. Yannetti?

20 MR. YANNETTI: I do. May I, Your Honor?

21 THE COURT: Yes.

22 MR. YANNETTI: I should have asked permission.

23 THE COURT: No. That's okay.

24 BY MR. YANNETTI:

25 Q I have placed a document before you. Feel

1 free to familiarize yourself with it and please look up
2 at me when you're done.

3 A (Witness complies.)

4 Q Does that appear to be your police report,
5 sir?

6 A Yes.

7 Q Now, you'll --

8 MR. YANNETTI: With the Court's permission,
9 I'd actually like the officer to have the report in
10 front of him when I ask him these questions.

11 THE COURT: Okay. But nothing is going up on
12 the screen, right?

13 MR. YANNETTI: Not yet.

14 THE COURT: Okay. So approach before it does.
15 Okay?

16 MR. YANNETTI: I will. I promise.

17 THE COURT: Okay.

18 BY MR. YANNETTI:

19 Q So I'm directing your attention to the first
20 page.

21 A Okay.

22 Q You will agree with me that this report is
23 submitted with regard to Incident No. 22-87-OF?

24 A Correct.

25 Q And this is Call No. 22-449, correct?

1 A Correct.

2 Q The date and time reported is listed as
3 January 29th of 2022 at 06:08, correct?

4 A Correct.

5 Q Which would be in military time, 6:08 a.m.?

6 A Correct.

7 Q The report date and time is listed as January
8 29th of 2022?

9 MR. LALLY: Objection, Your Honor.

10 THE COURT: All right. So why don't we come
11 to sidebar now. I'm sorry. I'm going to take that
12 from you.

13 THE WITNESS: Sure.

14 (Whereupon, there was a sidebar conference as
15 follows:)

16 THE COURT: The objection?

17 MR. LALLY: I don't understand the relevance
18 or the point of this, if he's just going to read
19 the entire report word for word or --

20 MR. YANNETTI: No.

21 THE COURT: I just want to say the reason I
22 wanted you to come to sidebar --

23 MR. LALLY: Sure.

24 THE COURT: If the Commonwealth tried to put
25 in a police report, I would shoot them right down.

1 MR. YANNETTI: I understand.

2 THE COURT: So what are we doing with the
3 screen and why are you reading to him?

4 MR. YANNETTI: Okay. So that portion that I
5 just read, it's essentially all I'm going to ask
6 him.

7 THE COURT: What page are you on, because I
8 have --

9 MR. YANNETTI: It's on the first page. It
10 shows the incident number, the call number, date
11 and time report, report date and time and reporting
12 officer. That's it. That's all I was going to
13 read from there, and then I was going to reference
14 the photo.

15 Where I'm going with this, Your Honor, is his
16 identical information that I'll have him
17 corroborate, the -- altered and changed. We've
18 blocked out any, you know, compromising
19 information. I'm not seeking any other portion of
20 the report, but I'd like to show the jury that and
21 then a closeup of that photo, show the jury this
22 and then a closeup of that photo.

23 THE COURT: What is that?

24 MR. YANNETTI: This actually shows a piece of
25 taillight that was not in the original photo. It's

1 a completely different photo.

2 THE COURT: Okay. Have you shown him this
3 yet?

4 MR. YANNETTI: He has not seen this yet.

5 THE COURT: All right. Is there an objection
6 to just continuing here and showing that one photo?

7 MR. LALLY: I have no objection to showing a
8 photo to the witness, but I don't want a photo
9 going on the screen.

10 THE COURT: All right. So you're going to
11 have to show him this. It's late in the day. How
12 much longer do you have with him?

13 MR. YANNETTI: I mean, I think I might be able
14 to -- finish by four? No. Apparently not. I
15 don't have that much more. Probably more than 15
16 minutes.

17 THE COURT: So why don't we bring him back
18 tomorrow, deal with this issue. All right? He's
19 going to have to look at it. I'd like these
20 marked. I'd like to have that voir dire of Lank
21 today. He's here, right?

22 MR. LALLY: I believe so He was.

23 MR. YANNETTI: My concern, Your Honor, from a
24 strategic standing and also with regard to
25 sequestration, I have now shown my cards.

1 THE COURT: I don't think you have because it
2 wasn't at all clear to me what you were doing.

3 MR. YANNETTI: I get that. My point is I
4 don't want the Commonwealth to be revealing to the
5 witness where I'm going with this.

6 THE COURT: He won't.

7 MR. YANNETTI: Okay. That's all.

8 THE COURT: Otherwise, I don't know when we
9 will get that voir dire in, and I think that's
10 important.

11 MR. YANNETTI: I understand.

12 THE COURT: So does this seem like a good
13 place to end, then, with him?

14 MR. YANNETTI: That's fine, Your Honor. Yes.
15 We can do that.

16 THE COURT: All right. Because you're going
17 to have to show him that before.

18 (Whereupon, the sidebar conference concluded.)

19 (Whereupon, first page of incident report of
20 January 30, 2022 was entered and marked Exhibit "P"
21 for Identification.)

22 (Whereupon, first page of incident report of
23 October 25, 2022 was entered and marked Exhibit "Q"
24 for Identification.)

25 THE COURT REPORTER: "P" and "Q" for

1 identification.

2 THE COURT: So, jurors, from time to time,
3 from time to time, things come up with the lawyers
4 that I need a little bit more time with. What I'd
5 like to do then is just end for the day. We'll
6 stay, but we'll send you home rather than us trying
7 to do this at sidebar now.

8 The three same cautions: Please do not
9 discuss this case with anyone. Don't do any
10 independent research or investigation into this
11 case. If you happen to see, hear or read anything
12 about this case, please disregard it and let us
13 know.

14 So we'll see you tomorrow morning. Tomorrow
15 is a half day.

16 (Whereupon, the jury is escorted from the courtroom
17 and excused for the day.)

18 THE COURT: So this means we'll need you back
19 tomorrow, Sergeant.

20 All right. So someone needs to get Sergeant
21 Lank. So the voir dire I thought or hoped we would
22 have finished this earlier and I'd be able to give
23 you more time, but I suggested 10 to 15 minutes.
24 Mr. Jackson tells me that's fine for him.

25 MR. JACKSON: That's fine.

1 THE COURT: And the Commonwealth, as well. So
2 what I'd like to do is 10 minutes would be great
3 from each of you, and then I'll hear argument
4 because it means now I'm keeping the staff longer
5 than necessary.

6 MR. YANNETTI: Is he here?

7 MR. LALLY: He is.

8 Whereupon,

9 MICHAEL LANK

10 having been first duly sworn, was examined and
11 testified under oath as follows:

12 MR. JACKSON: May I, Your Honor?

13 THE COURT: Please.

14 VOIR DIRE EXAMINATION

15 BY MR. JACKSON:

16 Q Thank you for joining us late in the
17 afternoon, Sergeant Lank.

18 I am going to direct your attention to your
19 relationship with the Albert family and some of the
20 members of the Albert family.

21 Do you know who Tim Albert is?

22 A Yes.

23 Q Do you know who Chris Albert is?

24 A Yes.

25 Q Do you know who Brian --

1 THE COURT REPORTER: Could I just interrupt?

2 I just need your name.

3 MR. JACKSON: I'm so sorry.

4 BY MR. JACKSON:

5 Q Could you please state your name and spell
6 your name for the record, please?

7 A Michael Lank, L-A-N-K.

8 Q Michael, common spelling?

9 A Yes.

10 Q I'll start over. Do you know Tim Albert is?

11 A I do.

12 Q And do you know who Chris Albert is?

13 A I do.

14 Q And do you know who Brian Albert is?

15 A I do.

16 Q How do you know Tim Albert?

17 A I know Tim Albert to be one of the younger
18 brothers of the Albert family.

19 Q How long have you known Tim?

20 A Since childhood.

21 Q What about Chris Albert?

22 A Yes. I know Chris.

23 Q How long have you known Chris?

24 A Since childhood.

25 Q And how would you describe your relation with

1 Chris Albert?

2 A Chris and I were pretty good friends growing
3 up right into our twenties, still friendly when I see
4 him.

5 Q Still socialize with him?

6 A No.

7 Q When did you last socialize with Chris Albert?

8 A I couldn't tell you the last time I personally
9 socialized with him. I've seen him at events, but
10 Chris and I don't make arrangements to go out together.

11 Q What about Brian Albert? How would you
12 describe your relationship with him?

13 A Civil.

14 Q Friendly?

15 A Exchange pleasantries when I see him, "hello."

16 Q But you're closer to Chris?

17 A Yes.

18 Q Have you ever described yourself as being a
19 longtime, quote, unquote, "drinking buddy" with Chris?

20 A No.

21 Q Would you describe yourself previously in
22 years past as being a drinking buddy of Chris?

23 A No.

24 Q Have you ever gone out for drinks with Chris?

25 A Not in years.

1 Q Ever?

2 A Yes.

3 Q So you've socialized with him in circumstances
4 in which y'all are drinking and imbibing?

5 A It's been many years, but yes.

6 Q Your relationship with Chris certainly goes
7 all the way back to 2002?

8 A Again, we were friendlier back then. Yes.

9 Q Right. Back in 2002 in August while you were
10 off-duty, were you out either drinking with Chris or in
11 some way at a restaurant or a bar with Chris?

12 A No.

13 Q Were you close in proximity to Chris when he
14 was out drinking and at a bar?

15 A No.

16 Q Was he at a restaurant?

17 A I don't know where he was.

18 Q Were you at a bar?

19 A I was.

20 Q At some point, did you realize that Chris was
21 getting into some sort of a physical altercation with
22 somebody else in a parking lot?

23 A Yes.

24 Q Did you jump into a fistfight in order to
25 protect Chris Albert?

1 A Chris actually approached my vehicle and
2 started to describe an altercation that he had been in
3 previously in the night.

4 Q When you say your vehicle, your personal
5 vehicle?

6 A Yes.

7 Q So you were off-duty; is that right?

8 A Yes.

9 Q And you had been drinking?

10 A Yes.

11 Q There's nothing wrong with that.

12 A Yes.

13 Q But it just so happens that you had been
14 drinking that afternoon?

15 A Yes.

16 Q Tim Allen was with Chris, correct?

17 A Not when I saw him, no.

18 Q Okay. Ultimately when you realized that Chris
19 Albert was in some sort of fracas, some sort of fight
20 or altercation, you activated yourself as a police
21 officer at the time?

22 A He wasn't in a fracas when he approached my
23 vehicle. He approached my vehicle and stated that he
24 had been in an altercation earlier in the night with
25 one of the LoPilato brothers and that during that

1 altercation threats were made against him and his
2 family. And he was seeking advice, because he knew I
3 was a police officer, as to how he should go forward.
4 And, as I was telling him what to do, that's when a
5 group of men started to walk down Washington Street
6 towards Chris. And he said, Oh, no. Here they come.

7 Q So that would be Mark LoPilato, correct?

8 A Yes.

9 Q And his brother, Alfred?

10 A Yes. Alfredo.

11 Q Alfredo. Sorry. You got out of your car and
12 approached the other men?

13 A Yes.

14 Q You also called for a Canton Police backup?

15 A I brought my attention to the restaurant owner
16 and a bartender who had walked out into the street, and
17 I yelled for them to call the Canton Police.

18 Q The Canton Police did, in fact, arrive,
19 correct?

20 A They did.

21 Q Isn't it true that after you got involved and
22 Canton Police arrived, you then instructed some of your
23 colleague police officers to handcuff Alfredo?

24 A I can't recall.

25 Q Isn't it true that Alfredo was handcuffed and

1 for all intents and purposes physically incapacitated,
2 you then approached Mark LoPilato?

3 A No.

4 Q You got into a fight with Mark LoPilato,
5 though, didn't you?

6 A Yes.

7 Q You punched him in the face?

8 A At one point after he had struck me, yes.

9 Q So your story is he struck you first and then
10 you punched him?

11 A Yes.

12 Q His story, of course, is you punched him
13 first.

14 A I don't know what his story is.

15 Q Well, you were sued in federal court and he
16 told you his story in that lawsuit, correct?

17 A So I actually have a question. The criminal
18 case was adjudicated. The civil case I did sign a
19 nondisclosure. So I'm not sure if I can speak on that.

20 Q I will never ask you what the nature of any
21 settlement in that case was, just the fact that you
22 were sued and a public document, which a federal
23 lawsuit is a public document, you were sued in federal
24 court over this incident I'm talking about, correct?

25 A Yes.

1 Q And ultimately it was settled. I'll never ask
2 you what the terms of the settlement are because that's
3 confidential.

4 A It was settled. Yes.

5 Q Ultimately, you said that the criminal case
6 was adjudicated. We'll get to that in just a second.

7 Did you testify at that criminal case?

8 A I did.

9 Q I want to sort of tailor this a little bit
10 because we are on a little bit of a time crunch and I
11 want to be sensitive to the Court's time and your time.

12 The allegation that Mark LoPilato made against
13 you is that you punched him, took him to the ground,
14 continued to beat him and bit him to the point of
15 drawing blood, correct?

16 A I believe that was his allegation, yes.

17 Q It then indicated that once the police
18 officers that were there pulled you off of him, you
19 then turned and walked over to Alfredo while he was
20 still incapacitated, meaning physically handcuffed, and
21 spat in his face?

22 A I believe that was his allegation, yes, sir.

23 Q Ultimately, both men after this altercation
24 were allowed to leave the location, correct?

25 A I believe one fled and the other one was

1 allowed to leave, yes.

2 Q Okay. You're telling me now that Mark
3 LoPilato punched you first, a police officer, correct?

4 A Yes.

5 Q And are you aware of any circumstance in which
6 an individual would be able to punch a police officer
7 on duty or off duty in the presence of other police
8 officers and just be released? That wouldn't happen,
9 would it?

10 A I don't believe the other police officers were
11 on scene when the fight initiated.

12 Q Did you tell them that you got punched?

13 A I don't recall.

14 Q They certainly let Mark go, correct?

15 A Mark fled.

16 Q Okay.

17 A Alfredo was released.

18 Q So the next day, Mark and Alfredo showed up at
19 Canton P.D. to file a complaint against you and some of
20 the other police officers that were involved, correct?

21 A That's what I was told. I wasn't there.

22 Q You didn't file a report for assault or
23 battery or anything like that, correct?

24 A I spoke with my sergeant that night, and he
25 said that I could do the report when I came back on my

1 next day of work.

2 Q My question is on that night, did you file a
3 report?

4 A No.

5 Q The next day did you file a report?

6 A I don't recall if it was one or two days
7 later.

8 Q It was actually three days later; wasn't it?

9 A I'm not sure.

10 Q Okay. Does it sound like it's in the time
11 frame? It probably was about three days later?

12 A I honestly couldn't tell you. It's 22 years
13 ago. I'm not really sure.

14 Q But between the time this fight happened and
15 you filed a report, Mark LoPilato and his brother,
16 Alfredo, came into Canton P.D. and asked to swear out a
17 complaint against you and fellow officers, correct?

18 A I believe so.

19 Q And they were told to go away on that day?

20 A I couldn't speak to that.

21 Q By the time they came back to file the
22 complaint, then police reports had been written, right?

23 A I don't know.

24 Q Once those police reports were written after
25 they indicated that they wanted to file a complaint,

1 ultimately charges were brought against them, correct?

2 A Again, ultimately charges were brought. I
3 don't know the exact timeline.

4 Q After charges had been brought and both
5 brothers ended up having to go to court and defend
6 themselves, you ran into both brothers at a Mobil gas
7 station?

8 A Yes.

9 Q You confronted both brothers, correct?

10 A No.

11 Q You approached both brothers?

12 A No.

13 Q Isn't it true that you walked up and said, how
14 you doing, to the two guys and one of them responded,
15 not so good. You attacked me, and now I've got to go
16 to court. Wasn't that the conversation?

17 A I believe they initiated the conversation with
18 me.

19 Q Did you say, how are you doing?

20 A Something to that nature.

21 Q And did they respond something to the effect
22 of I'm not doing so good because you attacked me and
23 now I've got to defend myself in court?

24 A I don't recall exactly what they said in
25 response.

1 Q And then, based on that interaction, you
2 arrested them for witness intimidation, correct?

3 A Well, there was further interaction. It
4 wasn't just the response to "how are you doing." They
5 made threats and they were ultimately arrested. Yes,
6 sir.

7 Q So your claim now is that they made threats
8 against you, a sitting police officer at the time? A
9 working police officer.

10 A Yes.

11 Q Okay. And you reported that threat to the
12 D.A.'s office?

13 A Yes.

14 Q And charges were brought against them? I'm
15 sorry. A report was brought against them for that
16 witness intimidation, correct?

17 A Correct.

18 Q Ultimately, with regard to the assault charges
19 for which they were arrested and tried, they were found
20 not guilty in a public adjudication, criminal case,
21 correct?

22 A Correct.

23 Q And the D.A.'s office threw out the witness
24 intimidation charges because they were meritless; isn't
25 that right?

1 A The charges were thrown out.

2 Q And all of this history that we've just talked
3 about came on the heels of you assisting Chris and
4 Tim Albert in a fight they said they'd been in earlier
5 in the evening; is that right?

6 A No.

7 Q You just told us that the reason you got
8 involved is this melee, this fight to begin with, was
9 because Chris Albert approached you and said, I was in
10 a fight with some guys earlier tonight and here they
11 come?

12 A Yes. And you just said that he was with
13 Tim Albert. I never saw Tim Albert that night.

14 Q My mistake. Let's just leave it at Chris.

15 A He was with his fiancé.

16 Q Okay. So all of this situation emanated from
17 you coming to the aid of Chris Albert, your friend,
18 longtime childhood friend, correct?

19 A It had nothing to do with it being
20 Chris Albert.

21 Q Isn't it true that it had everything to do
22 with it being Chris Albert?

23 A No.

24 Q So just a regular random guy off the street,
25 you would have conducted yourself the exact same way?

1 A Absolutely.

2 Q Isn't it true that what you actually did,
3 Sergeant Lank, in that particular circumstance was you
4 came to the aid of a friend and you used your position
5 as a police officer to further that assistance and that
6 protection?

7 A No.

8 MR. JACKSON: That's all I have, Your Honor.

9 THE COURT: Okay. Mr. Lally?

10 MR. LALLY: Thank you.

11 BY MR. LALLY:

12 Q Whatever happened between Christopher Albert
13 and these brothers on that particular evening, you
14 weren't present for that?

15 A No.

16 Q And your testimony is that Tim Albert wasn't
17 present at any point in time when you were there,
18 either, correct?

19 A No.

20 Q Now, with regard to Tim Allen, what, if any,
21 other involvement have you had with him as far as
22 through your official duties as a police officer?

23 A I was involved in an investigation where we
24 had to take out charges against Tim Albert.

25 Q So you've been involved in an investigation

1 where charges were actually taken out against a member
2 of the Albert family, correct?

3 A Correct.

4 Q And do you recall around about when that was?

5 A I believe it was 2012.

6 Q Do you recall who, if anyone, from your
7 department was working with you on that investigation?

8 A It would have been Officer Goode at the time.

9 Q And that's now Sergeant Sean Goode; is that
10 correct?

11 A That's correct.

12 Q The same Sean Goode involved in this case,
13 correct?

14 A Correct.

15 Q Now, with regard to the federal suit that was
16 brought, that was settled, correct?

17 A That's correct.

18 Q So there was no disposition on it, no finding
19 of liability or anything of the like?

20 A Correct.

21 Q Now, with respect to Brian, how would you
22 describe your relationship with him?

23 A Again, civil.

24 Q Are the two of you friends?

25 A Can you repeat that, please?

1 Q Are the two of you friends?

2 A No.

3 Q Do you socialize with Brian Albert or have you
4 at any point in time?

5 A I've been at events where Brian is at and we
6 will say hello, but that's pretty much the extent of
7 it.

8 Q Have you ever socialized with Brian Albert,
9 just the two of you?

10 A No.

11 Q Have you ever been to his house or inside his
12 house?

13 A No.

14 Q Now, with regard to -- other than that day of
15 January 29th, 2022, correct?

16 A Correct.

17 Q You and Brian Albert, do you get along?

18 THE COURT: Say that again?

19 MR. LALLY: I said, he and Brian Albert, do
20 they get along.

21 THE WITNESS: We have had some disagreements,
22 I would say, in the past. But, again, we are
23 civil. We get along enough to say "hello."

24 BY MR. LALLY:

25 Q Anything to do with your response, your

1 interviews or anything to do with January 29th, 2022,
2 have anything to do with the Albert Family or Brian
3 Albert or Christopher Albert or anything to do with the
4 Alberts whatsoever?

5 A No.

6 Q That didn't change what you were doing, how
7 you were doing it or how you conducted yourself in this
8 investigation; is that correct?

9 A That's correct.

10 MR. LALLY: Nothing further, Your Honor.

11 THE COURT: Okay.

12 MR. JACKSON: I have one slight area to cover,
13 with the Court's permission?

14 THE COURT: Okay.

15 BY MR. JACKSON:

16 Q Concerning Tim Albert and this issue or the
17 investigation where charges were brought against
18 Tim Albert, that was a circumstance in which
19 Tim Albert, in broad daylight, slammed into a parked
20 car belonging to a woman and then fled the scene,
21 correct?

22 A No.

23 Q Didn't you follow a trail of transmission
24 fluid or something to find where he had gone?

25 A I did.

1 Q And he fled directly to 34 Fairview, correct?

2 A Correct.

3 Q He didn't live there. He went to his
4 brother's house, Brian?

5 A No. That's not correct.

6 Q He lived there at the time?

7 A Yes.

8 Q Okay. So you followed the trail of whatever
9 it is, fluid trail, all the way to where Tim Albert had
10 fled to. And you basically had no choice. He had just
11 slammed into the back of a car and then fled the scene;
12 isn't that right?

13 A I concluded my investigation by locating the
14 vehicle that had heavy damage.

15 Q The vehicle that he hit?

16 A His vehicle.

17 Q His vehicle had heavy damage, but so did the
18 vehicle that he hit, correct?

19 A You had said a minute ago that he had hit a
20 parked car. That's incorrect.

21 Q Oh, he hit a moving car?

22 A It was a vehicle that was -- I believe it was
23 stopped at a light. It wasn't a parked car. It was a
24 vehicle that was stopped.

25 Q Okay. Irrespective of whether the engine was

1 running or it was parked or not, he hit a car --

2 A Yes.

3 Q -- with a woman in it, fled the scene. Then
4 you find him trying to hide out at 34 Fairview,
5 correct?

6 A He had parked the car at 34 Fairview.

7 Q And you didn't have much choice. I mean,
8 there you have it. The evidence is right in front of
9 you. You can't really cover that one up, right?

10 A I would say I did my job.

11 MR. LALLY: Objection, Your Honor.

12 THE COURT: So this is voir dire. Would you
13 answer the question, please?

14 THE WITNESS: I would say I did my job.

15 BY MR. JACKSON:

16 Q Okay. Did you engage in any kind of a DUI
17 investigation?

18 A We spoke with him.

19 Q Did you give him FSTs?

20 A I don't recall if I did. I know I didn't. I
21 don't recall if Officer Goode did.

22 Q Did you give him a Breathalyzer?

23 A I did not.

24 Q Did you ask him for a blood test?

25 A I did not.

1 Q So no DUI investigation was really undertaken,
2 correct?

3 A Again, I can't recall what Officer Goode did,
4 but I was there.

5 Q But you didn't do it? You didn't do what I
6 just suggested, a full-blown DUI investigation?

7 A No.

8 Q Even though he hit another car and then fled
9 the scene?

10 A We spoke with him and he gave an explanation.

11 Q And that explanation, coming from Tim Albert,
12 was, I'm really sorry, I panicked, right?

13 A It was something to that nature.

14 Q And he turned around -- well, I'll just cut to
15 the chase. Y'all ended up charging him with a
16 misdemeanor, correct?

17 A I believe so.

18 Q And he was given diversion?

19 A I don't know.

20 Q And his record was wiped clean?

21 A I don't know.

22 MR. JACKSON: That's all I have.

23 THE COURT: All right. Thank you Sergeant.

24 You can step down, sir.

25 THE WITNESS: Thank you.

1 (Whereupon, the witness was excused.)

2 THE COURT: I'll hear you, Mr. Jackson.

3 MR. JACKSON: Thank you, Your Honor. I'll be
4 very brief. I spoke about the *Aguilar* case a couple
5 of days ago, and I think it's still attendant to
6 our conversation today or discussion today. That
7 case stands for the proposition that it doesn't
8 matter if the evidence reveals something other than
9 -- something that's otherwise inadmissible as long
10 as the material elaborates on or establishes that
11 there could be some kind of bias or prejudice.

12 There doesn't have to be a bias or prejudice.
13 I don't have to prove beyond a reasonable doubt or
14 to a clear and convincing evidence that there is a
15 bias or prejudice. But, if the evidence suggests
16 that there could be bias or prejudice, that is
17 proper fodder for the jury to consider, and that's
18 what we're asking.

19 In this case, Sergeant Lank's willingness to
20 activate himself as an officer, get involved with
21 Chris Albert, although it was in 2002, and I know
22 that that's something that Mr. Lally is going to
23 say and he's going to harp on that this was so long
24 ago, that actually cuts against the Commonwealth's
25 case. That shows how long these folks have been

1 involved with each other and how deep their
2 relationships run.

3 For him to sort of deputize himself in that
4 situation in order to help out his longtime friend
5 whom he socializes with, drinks with, grew up with,
6 establishes a bias and a prejudice in this case
7 against Ms. Read and in favor of the Alberts. And
8 it's not like he had a tangential part to play or
9 role to play in this investigation. He was the
10 very first officer to walk in that front door. He
11 absolutely knew what he was going to find when he
12 walked in the front door, which was the homeowners
13 and possibly other witnesses.

14 He engaged in an interview or a series of
15 interviews that were not recorded. I have no idea
16 what was said. The jurors are never going to find
17 out exactly what was said other than to take his
18 word for it. The jurors have to be able to weigh
19 and balance his credibility against an officer
20 that, for instance, even like Sergeant Goode, for
21 instance, who seems to come across far more
22 unbiased, just sort of a straight shooter.
23 Sergeant Lank is not that person. He never should
24 have walked in that front door. He should have
25 said to his supervisors, I have a relationship with

1 the Albert family. I've known these folks for too
2 long. I grew up with his brother or brothers.
3 I've known them my whole life. I am probably not
4 the right person to make the decisions about this
5 investigation. And unless and until the jurors
6 know that and can weigh and balance it, they can
7 toss it out if they want to, or they can adopt it
8 if they want to. The point is, they need to be
9 able to hear the evidence.

10 THE COURT: So I have a question for you. So
11 the part about the complaint at the station --

12 MR. JACKSON: Yes.

13 THE COURT: And being turned away, who are you
14 going to get that in from other than the LoPilato
15 brothers, which puts us a little far field? So he
16 didn't adopt it or said, I don't know or that's
17 what I've heard.

18 MR. JACKSON: So the LoPilato brothers I
19 think --

20 THE COURT: I know, but that's so far removed.

21 MR. JACKSON: I disagree. I think they are
22 the ones that are closest to the situation. So we
23 would ask the -- who's better to tell the jurors
24 that they walked in -- I can get the police report.
25 I can tell the Court when it's dated. It's dated

1 September 2nd or September 3rd, and the LoPilatos
2 walked in on August 31st to make a complaint.

3 THE COURT: I understand because you've
4 outlined it.

5 MR. JACKSON: Right.

6 THE COURT: Or Ms. Little outlined it, which
7 is very helpful. I don't disagree that some of
8 this is admissible. I just have to figure out how
9 you intend to get it in because I have to be
10 concerned about if it's a mini-trial within a
11 trial, and we are trying to avoid that.

12 MR. JACKSON: I think --

13 THE COURT: Hold on.

14 MR. JACKSON: Sure.

15 THE COURT: If he were to testify as he did,
16 that's what I understand, and the Commonwealth
17 didn't object to that, that seems admissible to me.

18 MR. JACKSON: I would probably seek to do it
19 with the Court's permission through two pieces of
20 evidence. One would be Mark or Alfredo, but I
21 don't think I would use both of them.

22 THE COURT: You would not?

23 MR. JACKSON: I would not. I would seek to
24 ask Mark to join us. He would testify to the
25 altercation. He would testify to the complaint.

1 And then I would seek to either get a stipulation
2 to the date of the police reports. I don't even
3 need the police reports in. If I can't get a
4 stipulation, then I probably would just ask the
5 Court to be able to establish that the police
6 report is a business record --

7 THE COURT: I would like to see those police
8 reports tonight in front of me. Okay?

9 MR. JACKSON: That would be fine, if I have
10 them. I will do my best to get them to the Court.
11 I can't get them to the Court tonight. We don't
12 have them.

13 THE COURT: Okay.

14 MR. JACKSON: So I will start working on that
15 immediately.

16 THE COURT: All right. Anything else?

17 MR. JACKSON: No, Your Honor.

18 THE COURT: Okay. Mr. Lally?

19 MR. LALLY: Your Honor, I would submit the
20 defendant hasn't met its burden. There is no
21 actual relevancy to any of this, and it is
22 essentially a trial within a trial at this point.
23 Bringing in other civilian witnesses to talk about
24 an incident which happened 22 years ago --

25 THE COURT: So let's forget about bringing in

1 the civilian witnesses. How about what we've
2 heard as to what Sergeant Lank would testify?

3 MR. LALLY: As to what Sergeant Lank would
4 testify to is the single incident in which he did
5 not witness anything to do with the Albert
6 brothers. Christopher Albert was never at 34
7 Fairview Road on January 28th or -- until much,
8 much later in the day of January 29th, and
9 certainly not at the same time that Sergeant Lank
10 was. I think counsel far overestimates what
11 Sergeant Lank's involvement in this particular
12 investigation was.

13 He shows up on scene. He assists with the
14 other officers, Lieutenant Gallagher and Sergeant
15 Goode that you've already heard from. And with
16 respect to -- he takes a couple of initial
17 statements. All those witnesses then subsequently
18 talk to troopers from the state police, testified
19 at grand jury, multiple grand juries, and will all
20 be testifying as witnesses in this case.

21 So any purported bias from an incident from 22
22 years ago involving a brother who wasn't even
23 present at the home on the night in question does
24 nothing but confuse the jury as to what the issues
25 are and creating this sort of bias out of thin

1 cloth that has no basis whatsoever in the facts of
2 this case.

3 THE COURT: So I disagree with you. I don't
4 know yet. I want to see those police reports. I
5 don't know yet what I'm going to allow in but I
6 disagree that it has nothing to do -- if it weren't
7 involving the Alberts, then under the grand jury
8 case, the decision by Justice Ganz, Chief Justice
9 Ganz at the time, it would have come in. But it
10 does. So it comes in under different purposes or
11 different reasons.

12 So I would like those reports tonight or
13 certainly by tomorrow morning before we come out.

14 MR. JACKSON: We will do our best.

15 THE COURT: All right. So we'll figure this
16 out tomorrow morning. Thank you very much.

17 MR. JACKSON: Thank you, Your Honor.

18 (Whereupon, the Court adjourned.)
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25

C E R T I F I C A T E

I, Paula M. Mills, retired certified court reporter, do hereby certify that the foregoing pages, page 11-3 to 11-277, is a true and accurate transcription of the voice recording in the aforementioned matter to the best of my skill and ability.

This, the 9th day of February, 2025.

\s\Paula M. Mills

Paula M. Mills

Retired Certified Court Reporter
and Court Transcriptionist